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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

THOMAS W. MOORE, MARY L. MOORE - PETITIONERS

VS.

PATTERSON, BELKNAP, WEBB & TYLER, ET. Al. - RESPONDENTS

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit*

*None Of Two Federal Or Two State Courts Addressed Merits

PETITION FOR WRIT OF CERTIORARI

THOMAS W. MOORE & MARY L. MOORE
139 SLEEPY HOLLOW LANE
CONGERS, NEW YORK 10920-1515
(914) 268-6704

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QUESTIONS PRESENTED

(I) DID THE FEDERAL COURT OF APPEALS' **WITHOUT GROUNDS REFUSAL TO HEAR OUR APPEAL** CONSTITUTIONALLY CAUSE THIS PETITION TO RESULT IN AN AS-OF-RIGHT HEARING AT THE SUPREME COURT?

(II) SHOULD CLEAR SUPREME COURT DECISIONS **BE REPEATEDLY EVADED** BY CUSTOM IN BOTH FEDERAL DISTRICT COURTS AND FEDERAL COURTS OF APPEAL?

(III) SHOULD THE SUPREME COURT ASSIGN IMPARTIAL TRIAL AND APPEALS PANEL JUDGES IN LIGHT OF SIX NYS JUSTICES FOLLOWED BY FIVE FEDERAL JUDGES COMPLETE TURN OVER THEIR "INDEPENDENCE OF JUDICIAL PROCESS" TO THE SAME, PRIVATE, LAW FIRM?

(IV) SHOULD **ALL** THIRTY-FOUR PARTNERS IN A LAW FIRM BE **GRANTED STATUS ABOVE**: USSC DECISIONS, U.S. CONSTITUTIONAL PROVISIONS, FEDERAL STATUTES, COMMON LAW, FEDERAL RULES OF CIVIL PROCEDURE AND LOCAL COURT RULES GUARANTEED TO ALL PARTIES, BECAUSE A NAMED PARTNER IS A FORMER FEDERAL JUDGE?

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. Moreover, Patterson, Belknap, Webb and Tyler (Hereafter "PBW&T") have been intentionally listed as the first Respondent unlike the list's order at two lower Federal Courts. This was done for two reasons. (1) PBW&T is the **central cause** of Petitioners' inability to obtain any hearing, much less a hearing on-the-merits from 6/90 through today's date. (2) PBW&T **has** by some secret method **become** the "**Judiciary**" under Art. III and Art. IV through this time period. A list of all the Respondent parties to the proceeding in the court whose FINAL ORDER is the subject of this petition is as follows: (1) NEW YORK STATE (Hereafter "NYS") COURT SYSTEM, (2) MARIO M. Cuomo as Governor of NYS, (3) ANN T. MIKOLL as Justice of NYS Supreme Court Appellate-Division Third Department (Hereafter "JSC AD-3d"), (4) PAUL J. YESAWICH JR. JSC AD-3d, (5) D. BRUCE CREW III JSC AD-3d, (6) THOMAS E. MERCURE JSC AD-3d, (7) NORMAN L. HARVEY JSC AD-3d, (8) JOAN B. LEFKOWITZ JSC, (9) MARIO M. CUOMO as an Individual Attorney (Hereafter "Esq."), (10) ANN T. MIKOLL Esq., (11) PAUL J. YESAWICH Jr. Esq., (12) D. BRUCE CREW III Esq., (13) THOMAS E. MERCURE Esq., (13) NORMAN L. HARVEY Esq., (14) JOAN B. LEFKOWITZ Esq., (15) JOHN D. WINTER Esq.

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THIS USSC IS NOTIFIED THAT TOM WAS TELEPHONED ON OR ABOUT 11/18/95 BY THE 2D. CIR. HANDLING TOM 11/15/95 MOTION AS A "PETITION FOR REHEARING". TOM DECLINED BECAUSE AN AS-OF-RIGHT HEARING HAS GREATER SIGNIFICANCE. HOWEVER, TOM'S 90 DAYS TO FILE SHOULD BEGIN WITH THE 11/27/95 DENIAL OF TOM 11/15/95 MOTION.

APPENDIX A: 11/27/95 FINAL "ORDER" COVERS 10/18/95 "ORDER" BOTH BY THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

APPENDIX B: 12/22/94 ENTRY DATE FOR DENIAL "ORDER" OF AMENDED COMPLAINT CONTAINING 260 FACTUAL VALID CAUSES OF ACTION, (HEREAFTER "FVCA") NO REASON GIVEN BY UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK (HEREAFTER "USDC SDNY").

APPENDIX C: 11/1/94 ENTRY DATE OF SUMMARY JUDGMENT "ORDER" "NO FVCAs" & "RES JUDICATA" "ORDERS" BY USDC, SDNY.

APPENDIX D: 7/23/93 NYS AD-3D APPELLATE DENIAL "ORDER" FOR CERTIFICATION OF LACK OF JURISDICTION TO USSC OR FOR PERMISSION TO APPEAL.

APPENDIX E: 4/29/93 NYS AD-3D APPELLATE UPHOLD "ORDER" OF NYS 12/3/91 "ORDER".

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APPENDIX G: 9/12/95 DENIAL OF AN IMPARTIAL PANEL OF JUDGES.

APPENDIX H: 9/30/93 2D CIR. RECEIVED REQUEST FOR IMPARTIAL JUDGE.

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3/26/91 "ARBITRATION" BETWEEN DONNELLAN

& GRANT. 4

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1995

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the final order below.

OPINIONS BELOW (NONE ON THE MERITS)

The 11/27/95 "Final Denial Order" of any Hearing or Appeal and the 10/18/95 "Order" of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The "Final Denial Order" of Motion to Amend of the United States district court appears at Appendix B to the Petition and is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is unpublished.

The opinion of the highest NYS court appears at Appendix D to the petition and is reported at 192 A.D. 2d. 1021 (4/29/93).

The opinion of the NYS supreme court appears at Appendix E to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals entered its "Final Order" was 11/27/95. This covered an earlier "Final Order" of 10/18/95. No DECISION was or will be made. The as-of-right **APPEAL**, following my 12/5/94 Notice of Appeal at USDC, SDNY, **has been DENIED us.**

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

TOM admits that this appears to require a second Statement of Authorities, other than case citations. If so, they are hereby restated in full.

However, the refusal of both the 2d Cir. and USDC, SDNY to even grant TOM a hearing (not to forget that two NYS Courts refused to even appear to follow the "Judicial Process") constitute 5½ year violations of the U.S. Constitutional Amendments V and XIV: "No person shall - be deprived of - liberty or property, without due process of law" 5th Amend. Add "No State to aforementioned" for 14th Amend. For 5½ years the 14th Amendment guarantee of "No State (including two federal courts 'within its jurisdiction') deny to any person the equal protection of the laws." has been violated in their "Orders".

The "Private Party", PBW&T including Mr. Winter Esq. has succeeded in taking over the U.S. Constitutional term "Judiciary" under the "Separation of Powers" guaranteed in Articles I, II and III. PBW&T has also accomplished violating Article IV §s 1, 2 and 4. The problem is: what can a citizen do where six NYS Justices and five Federal Judges allow all of the aforementioned to happen?

STATEMENT OF THE CASE

This case evolved from questioning the **legal authority** of Rockland County to terminate the employment of petitioner Mary Moore in June 1990. This case cannot be understood by separating fact from law. Ninety percent of this case consists of questions of law. A 3/26/91 "Arbitration" is crucial to granting a 9/30/91 motion for summary judgment under NYS CPLR Rule 3212 (a) & (b). This law is similar to Fed. R. Civ. P. 56. Respondents Patterson, Belknap, Webb and Tyler and partner John Winter Esq. (hereafter "PBW&T") motion's false affidavit claims this "Arbitration" was **against** petitioner **Mary Moore.** Yet, Mary was: (1) not present, (2) not represented, (3) not notified, (4) **not a party.** Petitioners Tom and Mary Moore (hereafter "TOM") were from 8/90 through 4/93 represented by attorneys. TOM pleaded, in opposition to this motion, that the "arbitration" was a "Sham". On 12/3/91 one NYS Justice, knowing this crucial question of fact, entered an alleged summary judgment order. On 4/29/93 five NYS Justices entered an alleged appellate uphold order. Neither alleged "order" states: "This order is: 'on the merits' or 'with prejudice". By common law, this NYS case is not Res Judicata. Neither "order" satisfies Article IV § 1 as a "Full Faith and Credit - **judicial Proceedings**".

On 12/29/93 TOM wrote both Chief Judge Griesa and also Chief Judge Newman that Harold R. Tyler Esq., as named partner of PBW&T and a former Federal Judge **would be sued** (for PBW&T acts) in SDNY. TOM included a Complaint naming 114 VIPs. TOM asked Chief Judge Newman, under 28 USC § 291 et seq., to request this USSC to obtain an impartial Federal Judge. Neither Chief Judge acted to obtain an impartial Judge for TOM's federal case.

On 1/14/94 TOM filed 12/29/93 Complaint in SDNY. On and after 2/28/94 TOM served 114 defendants with First Amended Complaint. On 3/16/94 TOM moved for permission and served Second Amended Complaint. On 11/1/94 Chief Judge Griesa, without either notice of his intent to TOM or Motion by Defendants, invoked Fed. R. Civ. P. 56 based upon "No Factual Valid Cause of Action"

(hereafter "FVCA") Summary Judgement Order against TOM. On 11/15/94 TOM filed Motion to Alter or Amend judgment with: amended complaint containing **260 FVCAs** against 114 defendants, numerous documents from NYS pleadings and record. On 11/22/94 Chief Judge Griesa before any reply by defendants and **without stating any grounds** denied TOM's Motion to Amend. On 12/5/94 TOM Filed a Notice of Appeal to: (1) 11/1/94 Summary Judgment Order and (2) 11/22/94 Denial of Amended Complaint Order.

TOM filed a Motion at the Second Circuit on 1/27/95 to obtain an impartial panel of Judges. This motion was submitted to Chief Judge Newman. This Motion was returned to TOM on 10/5/95 ie. Eight and One-Half months later. Judge Newman **Denied TOM an Impartial Panel of Judges!** On 8/8/95 Tom was forced to submit to a previously unknown, emergency surgery to remove life threatening cancer. Infection developed thereafter and Tom was forced to undergo massive Radiation Therapy and Chemotherapy in hospital for a second unforseen life threatening emergency. During these emergencies Tom had probable cause to believe that the Second Circuit had been notified and no Oral Argument would be scheduled. In 9/95 Mary was notified of a scheduled 10/12/95 Oral Argument Date.

The Second Circuit, in writing, authorizes a Pro Se Appellant to represent spouse. On 9/28/95 Second Circuit received two notices of TOM request for Oral Argument postponement sent by both Mary and also Tom's physician citing Tom's emergency illness. Second Circuit Local Rule 34 (c) entitled "Postponement of Argument" states: "**Except** in the event of an **emergency, such as an unforeseen illness of counsel** (no postponement)". Local Rule 34 (d) states: "If the court, - contemplates deciding an appeal without hearing oral argument, **each of the parties** will be given an opportunity **to file a statement** setting forth reasons for hearing oral argument". TOM, upon Tom's 11/10/95 partial recovery, filed a motion pursuant to Local Rules 34 (c) and (d) and requesting Oral Argument. Second Circuit **Denied** its own as-of-right Rules **without**

stating a reason. This motion Denial was filed 11/27/95.

REASONS FOR GRANTING THE PETITION

(I) DID THE FEDERAL COURT OF APPEALS' **WITHOUT GROUNDS REFUSAL TO HEAR OUR APPEAL** CONSTITUTIONALLY CAUSE THIS PETITION TO RESULT IN AN AS-OF-RIGHT HEARING AT THE SUPREME COURT (HEREAFTER "USSC")?

This USSC to fully understand the gravity of this petition, is hereby asked to **examine:** the facts and law stated under **STATEMENT OF THE CASE** and under any one "Question", as if they also were stated under any other "Question" as grounds for granting TOM petition. Second Circuit's (Hereafter "2d. Cir.") 11/27/95 **Denial of any Hearing** without stating a reason for denying TOM's right to Oral Argument constitutes: (1) violation of as-of-right guarantee "to every party" under 2d Cir. Local Rules 34 (c) and (d). (2) **denial** of a guaranteed **as-of-right Appeal** after TOM's timely filed 12/5/94 Notice of Appeal at USDC SDNY. (3) violation of both due process of law under the 5th & 14th Amendments and also equal protection of the laws under the 14th Amendment due to: (a) TOM 12/29/93 Notice to 2d Cir. of need and specific reasons for impartial Judge. (b) TOM 12/29/93 request that Chief Judge Newman invoke 28 USC § 291 et. seq. to **CERTIFY** this need to the USSC. (c) **Denial of** TOM 1/27/95 **Motion,** on or about 10/5/95 over 8 months later by Chief Judge Newman, for **"an impartial** (disinterested) **Panel of Judges** in light of 114 VIP Respondents".

USSC Rule 19 "Procedure on a Certified Question" states: USSC "on its own motion or that of a party may consider and decide the entire matter in controversy." Both Chief Judge Griesa and also Chief Judge Newman **on 12/30/93** when they were fully notified of TOM lawsuit, **possessed knowledge** that neither the USDC SDNY nor 2d Cir. could provide an impartial Judge to ensure either the 5th or 14th Amendment guarantees of due process of law and equal protection under the laws for TOM Complaint sent with TOM notice. Evidence of said knowledge is the results from 12/30/93 through today's date. Judge Newman's 10/5/95 mailed **Denial** of TOM's 1/27/95 **Motion for an impartial Judge**

after TOM experience in USDC SDNY constitutes, by itself, sufficient evidence that Judge Newman was **duty bound to CERTIFY this question** and submit it to USSC. If no other ground exists, this **certified question of law** constitutes ground for USSC considering this entire matter in controversy.

PBW&T may argue that Tom is: (1) not entitled to join Mary. (2) not entitled to act as Counsel for Mary at 2d Cir. Tom at USDC SDNY pleaded that Tom has an insurance disability contract in NYS Courts that will become unwinnable solely due to Tom joinder with Mary. 2d Cir. (a) not only has a **written** statement that one appellant spouse may act as counsel for another spouse (b) but also on every motion for which Tom was granted extensions of time to file TOM's Brief by 2d Cir., Tom was listed as "attorney in charge of case".

PBW&T may argue that TOM was granted an appeal by 2d Cir. "paper" filed on 10/18/95 (Appendix exhibit to TOM 11/15/95 Motion for our rights under Local Rules 34 (c) and (d). Examination of TOM Two Briefs shows that every legal error made by 2d Cir. on its 10/18/95 "paper" is absolutely rebutted with correct citations and quotes in TOM's briefs already submitted to 2d Cir. PBW&T's 2d Cir. brief falsely **claims**: "Polur v. Raffe, 727 F. Supp. 810, 816 (SDNY 1989) **aff'd in relevant part**,. 912 F. 2d 52 (2d Cir. 1990) - because these state court judges are immune from suit, (TOM) cannot maintain a civil rights conspiracy claim against (PBW&T)." PBW&T's false citation **omits**; (a) the fact that 2d Cir. in Polar, supra. stated the direct opposite to PBW&T's claim. (b) the USSC 9 to 0 Decision in Dennis v. Sparks, 449 U.S. 24, 88 L. Ed. 185, 1010 S. Ct. 183 (USSC **11/17/80**): "Action under 42 USC § 1983 against private parties who allegedly conspired with state judge, held maintainable despite judge's immunity" (cited and quoted **in Polur**, supra. [5] on p. 56). PBW&T's false citation directly caused the 2d Cir. 10/18/95 "paper's" holding to be in direct conflict with Dennis, supra.

But TOM **Reply Brief** rebutted PBW&T's claim. TOM asserts this fact, legal citation and quote as evidence that 2d Cir. Panel of Judges for some

unknown reason - refused to even read TOM two Briefs either before the 10/12/95 scheduled Oral Argument or after it while preparing and signing this 10/18/95 "paper". This constitutes: **Second Denial of; (a) any Hearing** and (b) **Second Denial of Tom as-of-Right Appeal** by 2nd Cir.. Either set of facts constitutes "a compelling reason" to grant Petition.

(II) SHOULD CLEAR SUPREME COURT DECISIONS **BE REPEATEDLY EVADED** BY CUSTOM IN BOTH FEDERAL DISTRICT COURTS AND FEDERAL COURTS OF APPEAL?

TOM from 8/90 through 4/93 was represented by a law firm with NYS appellate experienced and USSC admitted attorneys. This law firm contracted to represent TOM "Throughout all aspects of Mary's employment discharge dispute". In 12/93 TOM not only demanded specific performance but also sent substantial moneys retainer to said law firm. TOM is Pro Se **only** because **no attorney** is willing to commit legal **career suicide** by representing TOM against these 114 VIPs. Shepardizing Dennis, supra. in L. Ed. 2d disclosed Three Hundred Ninety-Six (396) citations. TOM examined the 103 cases in 1st, 2nd, and 3rd Circuits. In the 2d. Cir. 34 out of 40 cases were summary judgment dismissed. In 103 Circuit cases, **not one was found where the plaintiff won damages against attorneys conspiring with state judges**! Yet, this is the reason for Dennis, supra.!

Foman v. Davis, 371 U.S. 178, 9 L. Ed. 222, 83 S. Ct. 227 (12/3/62) "Denial (of motion) to amend pleadings is within the discretion of Federal District Court under Fed. R. Civ. P. 15 (a) but no justifying reason is merely abuse of discretion". A summary judgement Order "No Factual Valid Cause of Action (hereafter "FVCA") was entered on 11/01/94 by USDC SDNY. TOM filed a Motion to Alter or Amend on 11/15/94 with an Amended Complaint containing **260 FVCAs** pursuant to Fed. R. Civ. P. 59 (e). TOM's Motion was timely. USDC SDNY: "(TOM's) motion is denied in all respects" entered 12/22/94. The USDC SDNY gave **no justifying reason** for its Denial of TOM Motion to Amend. Pursuant to Foman, supra. this Order is "abuse of discretion".

The cases dealing with "reasons for denial" list "prejudice to opposing party" as the most of ten accepted grounds. Normally a trial has been scheduled and delay could eliminate a defense witness, etc.. Here no trial was scheduled. Since all defendants **were initially served** with TOM First Amended Complaint, TOM can argue that, to these defendants, TOM 11/15/94 Complaint equated to a Second Amended Complaint. But this is the primary grounds for Fed. R. Civ. P. 15 (a) "on the merits" grant of amended pleadings.

TOM filed our Notice of Appeal on 12/5/94 (entered on 12/29/94). TOM appealed both the Summary Judgment Order and also the Denial of Motion to Amend Order. TOM **pleaded** the USDC's "abuse of discretion" and Foman, supra. to 2d Cir. in our Appellants Brief pg. 35, filed 4/6/95. 2d Cir. on both 10/18/95 and also 11/17/95 **Denied** Tom **any Hearing** (or **as-of-right Appeal**). 2d Cir. 10/18/95 "paper" states: "judgments of (USDC SDNY) **are AFFIRMED**" (Appendix). This is further evidence that 2d Cir. refused to even read TOM two Briefs. Two lower federal courts **evaded** Foman, supra.

Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 652 (1972) "A pro se complaint is held 'to less stringent standards than formal pleadings drafted by lawyers". 2d Cir. 10/18/95 "paper" (Appendix) states: **"This summary order will not be published in the federal reporter and should NOT BE CITED OR OTHERWISE RELIED UPON in the unrelated cases before this or any other court"!** How many cases during 16 years (since Dennis, supra. USSC, 9 to 0, Decision) have been buried by: (1) USDCs in 2d Cir., (2) similar 2d Cir. 10/18/95 "papers", (3) other USDCs, (3) other Cir.s? Are the 396 cases found in F. Rp. or F. Supp. only the "Tip of an iceberg"?

2d Cir. 10/18/95 "paper" **buried** TOM 4/6/95 brief & appendix, PBW&T's brief and TOM's 6/12/95 reply brief. TOM 6/12/95 Reply Brief pg. 34 disclosed PBW&T's false claim as to Polur, supra.. TOM intended to add Dennis, supra. at Oral Argument. 2d Cir. **in writing:** (1) Denied our two timely requests for Oral Argument (Appendix "A" three exhibits). (2) violated 2d Cir. Local Rules

34 (c) and (d). (3) buried its refusal to even read TOM's Briefs (4) buried evidence of its evasion of Dennis, supra. USSC Decision contained in TOM 11/15/95 motion.

Aforementioned two pars. violated Haines, supra.. Why? Because "less stringent standards" is **identical** to "more liberal examination" by any court of a pro se party's pleading. But TOM pleadings could ONLY be "more liberally examined" by **granting our two written 9/95 requests for Oral Argument!** Moreover, is this evidence of **only one** violation of Haines, supra.? How many pro-se appeals, guaranteed by Haines, supra. (1972) **during 24 years**: (a) have occurred? (b) are "unpublished" buried? (c) no petition for certiorari submitted due to loss of hope? (d) petitions denied? When examining our Petition for USSC review, we ask the examiners to not only consider lower federal court abuse of: Haines, supra., Foman, supra., Dennis, supra. and the practice of federal courts' burying an unpublished "paper" to TOM but also **how many tens of thousands** of similar cases have either not been submitted or been denied certiorari by prior USSC examiners? Acceptance of TOM case acts to represent tens of thousands of **similar cases** and to reverse all cases currently in process in lower Federal (and State) courts.

Does USSC have an (unwritten) rule that layperson pro se petitions (other than capital cases) are uniformly denied? If this rule does exist, **TOM should be an exception** to this rule. Both the USDC SDNY and also 2d Cir. had to be under heavy **pressure** to cause them to violate: (1) 5th Amendment, (2) 14th Amendment, (3) Haines, supra., (4) Foman, supra., (5) Dennis, supra., (6) Fed. Rs. Civ. P. 15 (a), and 56, (7) Local Rules 34 (c) and (d), etc.. This pressure should not have existed. Only a small percentage of layperson pro se parties can present legal argument to compete with PBW&T. A USSC hearing will be "a fair adversarial contest"! If TOM did not match PBW&T, no provision, decision or rule need be violated by the two lower federal courts. TOM is not just one, unique case. TOM constitutes a: "**Class of** pro se parties and attorney represented parties who do not

sue 114 VIPs, **legally** (not factually) **similar cases** in every federal court **for 24 years**". USSC should not wait for some attorney to be willing to commit legal career suicide because this may never occur! By custom **evasion** of three USSC Decisions by lower federal courts constitutes a "compelling reason" to grant TOM Petition.

(III) SHOULD THE SUPREME COURT ASSIGN IMPARTIAL TRIAL AND APPEALS PANEL JUDGES WHERE SIX NYS JUSTICES FOLLOWED BY FIVE FEDERAL JUDGES COMPLETELY TURNED OVER THEIR "INDEPENDENCE OF JUDICIAL PROCESS" TO THE SAME, PRIVATE, LAW FIRM?

TOM case is similar to Dennis, supra. since PBW&T's private party's conspiracy with a judge subverted the judicial process thereby injuring TOM. However, PBW&T subverted the **independence of the judicial process throughout TWO COURT SYSTEMS.**

TOM USDC SDNY case 94 Civ. 0208 (TPG) served: Governor Cuomo, and six NYS Justices both officially and also as individual attorneys; the entire NYS Court System Judiciary officially; PBW&T as a Partnership of attorneys and Winter Esq. as an attorney. TOM sued NYS State Governor for abusing his executive power to not only take over one Justice's lower court but also to take over one Appellate Division five Justices' court. **Any** Governor can by similar method take over **every** state court creating a Governor Court System in direct violation of U.S. Constitution Art. IV § 4. This conspiracy was "**secretly**" accomplished. TOM pleaded in the alternative that it is policy or custom of all NYS courts to violate U.S. Constitutional Provisions by conspiring with one party's law firm where that party is a division of NYS or an executive of said division.

It is one act to bribe one judge ie. Dennis, spra.. It is far more **serious** to - by some method - control every State Court at every level. "Compelling reason One" is it is crucial to investigate at a jury trial, presided over by an impartial Federal Judge, "**How PBW&T controls the entire NYS Court System!**" PBW&T has by some "secret" method "pressured" five Federal Judges, to violate: Clear USSC Decisions, U.S. Constitutional

Provisions, etc. "Compelling reason two" asks the added question **"How did PBW&T take over a large portion of the Federal Judiciary's power under Article III and Article IV of the U. S. Constitution?"** Neither Question will be answered unless USSC accepts TOM Petition and carefully selects a Federal Judge who will not act as five Federal Judges have already acted!

First: The entire NYS "Proceeding" was totally waived by PBW&T. Six NYS Justices violated NYS JUDICIARY STATUTES. TOM federal 11/15/94 Amended Complaint pg. 9 par. 21 states:

> "TWENTY-FIRST: PBW&T's Seventeenth through Twenty-Seventh fvc/as are: PBW&T intentionally violated CPLR 3211 (3) and thereby **deceived** six NYS Justices. PBW&T served a Verified Answer on **7/31/91**. Nowhere in said answer is 3211 (5) 'Arbitration and award' mentioned or reserved for use in a Motion to dismiss much less a Motion for Summary Judgement. On or about **9/30/91** PBW&T obtained an Index Number and filed its Motion to Dismiss and for Summary Judgement. The Key to filing of both these Motions are affidavits that caused the Court to believe that all of the issues are eliminated. Anderson's Affidavit asserts that an arbitrator in an arbitration grievance **against Mary** determined that no issues remained unresolved. The fact that Anderson's affidavit was **subornation of perjury** by PBW&T both times Anderson stated "against **Ms. Moore**" constitutes one fvc/a by PBW&T against five AD-3d Justices of **deceit**. PBW&T's intentional violation of 3211 (e). 'Any objection or defense based upon a ground set forth in par. - five, - is **waived** unless raised in the responsive pleading". This formed a **second deceit** of six NYS Justices. PBW&T filed its Motion as if PBW&T's answer raised Rule 5(a) "Arbitration".

Second: TOM notified both federal courts that the entire NYS "Proceeding" had a **second crucial defect.** The 9/30/91 PBW&T motion was solely grounded upon PBW&T's false claim that the

3/26/91 Arbitration was against **Mary**. This NYS "proceeding" began on 10/4/91 and ended on 7/23/93. Six NYS Justices **were notified** by TOM attorneys that this "Arbitration" was a "**Sham**".

This is a Question of Fact on a Judicial STATUTORY requirement.

This "Proceeding" per CPLR Rule 3212 (b): "(PBW&T) motion **shall be denied** if any party shall show facts sufficient to require a trial of any issue of fact" - (TOM Bold)

Based solely upon these aforementioned STATUTES, this **entire NYS "Proceeding" was** not a "Judicial Process"!

Other Statutory issues are: First, from 3/2/87 to date of Mary's illegal termination over 3 & 1/3 years later, Rockland County's Executive violated the only statute (NYS Executive Law § 357) upon which Rockland County totally relies to claim that Mary was an "At-will employee". Estoppel prevents Rockland County from making this allegation. Second, Mary was fired solely because mary whistle-blew that Rockland County was violating NYS Constitution Art. 8 § 1. This violates NYS Civil Service Law 75 (b) preventing firing, even if Mary were "At-will". This raised First Amendment "Freedom of Speech" Cause of Action.

TOM NYS attorneys, being appellate experienced, diligently contested every issue raised by PBW&T not solely with facts but also with 134 citations and other authorities. NYS officials must justify their **5th and 14th Amendments violation by denial of due process of law and equal protection under the laws** in light of TOM Attorneys' pleadings. TOM federal 11/15/94 Amended Complaint par. 3 emphasizes this fact:

> "THIRD: - the difficulty that Tom experienced in analyzing two exhibits hereto. Exhibit One is the JSC 12/3/91 NYS court order. Exhibit Two is the 4/29/93 AD-3d Uphold of the 12/3/91 Order. The true reason is the every matter involved in this case relies on

One NYS Summary Judgement Principle. This Principle is **"If an issue is arguable, trial is needed and the motion must be denied."** Barrett v. Jacobs, 255 N.Y. 520, 175 N.E. 275 (1931). -

TOM prepared a Motion for permission to appeal directly to USSC based upon the grounds of **total lack of Jurisdiction** of all six NYS Justices. TOM filed both a Motion with NYS Ad-3d on 5/29/93 and a Reply affidavit on 6/26/93 for CERTIFIED IMPORTANCE OF THE CONSTITUTIONAL ISSUE(S) citing Supreme Court Practice Stein & Gressman Pg. 85. In these two documents TOM stated facts that violate: Art. I § 10, Art. IV §s 2 & 4, Art. I through Art. III "Separation of Powers" and again **specifically asked NYS AD-3d to CERTIFY these issues to USSC**. On pages 4 and 5 of Mary's 6/26/93 Reply affidavit TOM specifically identified 209 Triable Questions of Fact that exist in the NYS alleged case "Record".

Both USDC SDNY and 2d Cir. knew of TOM notice to NYS AD-3d five Justices. On 4/8/94 TOM served and filed an Affidavit IN USDC SDNY on pg. 1 states:

> "3. Black's Law Dictionary 4th ed. defines "Jurisdiction" as: "It is the authority, capacity, power or right to act." Exhibit #1 hereto consists of three pages from our 5/30/93 Motion to appeal to a USDC from Index 7036/91 Summary Judgement 12/3/91 Order and Ad-3d's #66853 4/29/93 Uphold of said Order. - The key is notice on the Second. **'NO JURISDICTION OCCURS for Summary Judgement Proceedings in any Court where ONE QUESTION OF FACT exists. -**
>
> 4. Exhibit #2 hereto consists of two pages from our 6/26/93 Reply Affidavit. These are exhibit #3 that specifically identifies 142 Triable Question of Fact and exhibit #4 that specifically identities 54 additional Triable Questions of Fact.-"

Legally "silence shows consent" see 6 Barb. (N.Y.) 28, 35. USDC SDNY and 2d Cir. **evade** Foman,

supra., Fed. R. Civ. P. 15 (a), and 2d Cir. Local Rules 34 (c) and (d) solely to remain **silent** to TOM 11/15/94 Amended Complaint's 260 FVCAs evidence. The majority of this evidence exists in the 12/3/91 and 4/29/93 "orders" signed by six NYS Justices versus PBW&T's pleadings. TOM 11/15/94 Complaint shows how five NYS Justices' "order" acts as evidence that said Justices conspired with PBW&T.

> NINETY-FOURTH: AD-3d cited 26 Cases in Exhibit Two. Five were Murphy, supra. Five were other Cases in PBW&T's Respondents Brief. **Sixteen were Cases not cited by PBW&T nor by Mary's Attorneys.** Tom asserts that the facts in pars. EIGHTY-SECOND through NINETY-FOURTH constitute prima facie evidence of both collusion and also fraud of Mary by all five Justices in Ad-3d with the consent or active participation of PBW&T.

This evidence clearly shows the existence of a conspiracy between PBW&T and these six NYS Justices. Both lower federal court "orders", not considering their silence's **admission** of the conspiracy, dismiss PBW&T's liability to TOM. There are five elements of this **compelling reason**: (1) There exists some secret reason why **six** NYS Justices acted both **in unison** and also **so corruptly** from 10/4/91 through 7/23/93 while TOM was represented by NYS experienced appellate attorneys. (2) **PBW&T drafted** both "orders" **without notice** by either NYS court to TOM attorneys. (3) Both lower federal courts absolutely refused: (a) to provide impartial Judge(s). (b) to address the 260 FVCAs or their resulting 20+ Constitutional Provision violations. (c) to grant TOM any guaranteed Hearing. (4) Either NYS Governor Cuomo, for his own personal gain, coerced the six NYS Justices to violate Article IV of the U.S. Constitution (80% probability), or (5) The NYS Court System by custom or policy violates numerous U.S. Constitutional Provisions, whenever a division of NYS or executive of said division of NYS is a party to said case (20% probability), in favor of said division/executive.

This "**compelling reason**" is exacerbated because: (a) similar secret conspiracies may today

control the outcome of other States court cases. (b) conspiracy required participation by PBW&T with six NYS Justices that no attorney dares disclose to the USSC. (c) this requires a non-lawyer party (who dies not fear career suicide) to somehow overcome thousands of other Petitions solely to obtain a hearing at the USSC. (d) it defies the purpose of absolute judicial immunity "to protect the independence of the judicial process"! There existed no "independence" from 10/4/91 through 11/27/95 in either NYS Court System or Federal Court System.

TOM 6/12/95 Reply Brief that was totally disregarded by 2d. Cir. pg. 25 cites and quotes from:

In Ex parte Virginia, 100 U.S. 339, 25 L. Ed. 676, "USSC held that a Judge who excused Negros from juries could be held liable under the Act of March 1, 1875 (28 Stat. 335), one of the Civil Rights Acts. The Court assumed that the judge was merely performing a ministerial function' pg. 26 Ex parte Virginia, supra. The Law of Torts 1642-1643 (1956) "When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgement; he acts no longer as a judge, but as a minister of his own prejudices (TOM Bold)

2d. Cir. 10/18/95 "paper affirms the USDC judgment(s)", but 2d. Cir. overrules the USDC.

2d. Cir. 10/18/95 "paper" Holds: "This suit was properly dismissed against the private defendants, the law firm and the lawyer representing defendants - in (NYS), since the complaint failed to allege any governmental action by these two defendants. The suit was properly dismissed against the remaining defendants who are protected either by judicial immunity or in the case of the former governor, by Eleventh Amendment immunity." USDC 11/1/94 entered Order Holds: "With regard to (PBW&T) there is nothing approaching a factually sufficient statement of a valid cause of action against these defendants."

2d. Cir. 10/18/95 "paper" not only is in direct opposition to Dennis, supra. and Polur, supra. but also overrules USDC.

Immunity for a state governor who is not engaged in a "judicial act" is only "Qualified immunity" if he knows or should have know that he/she was violating: Article I § 10 "No State shall - grant any Title of Nobility", Article IV § 4 "The United States shall guarantee to every State - a Republican Form of Government (three independent branches). By coercing NYS Justices to violate the 1st, 5th and 14th Amendments, etc.. Governor Cuomo knew that he possessed no judicial immunity and that his qualified immunity was useless to overcome the pleadings in TOM complaint served personally on attorney Cuomo on 2/28/94.

TOM Moved Judge Griesa to order default judgment against Attorney Cuomo due to his failure (for **two years**) to respond to Judge Griesa's Summons, served by a NYS licensed Process Server's personal service and also a Certificate of Service USPS marked 2/28/94 by this same licensed process server as substituted service. Judge Griesa again remained silent to TOM motion with copies of all required documents.

(IV) SHOULD **ALL** THIRTY-FOUR PARTNERS IN A LAW FIRM BE **GRANTED STATUS ABOVE:** USSC DECISIONS, U.S. CONSTITUTIONAL PROVISIONS, FEDERAL STATUTES, COMMON LAW, FEDERAL RULES OF CIVIL PROCEDURE AND LOCAL COURT RULES GUARANTEED TO ALL PARTIES SOLELY BECAUSE A NAMED PARTNER IS A FORMER FEDERAL JUDGE?

TOM acknowledges the impressive credentials of Harold R. Tyler Jr. Esq., named partner in PBW&T. "Judge" Tyler Esq. was a Federal Judge in USDC SDNY from 1962-1975. He was Deputy Attorney General 1975-1977. He has been a practicing attorney as a partner (Member) of PBW&T apparently from 1977 through today's date, ie. **Eighteen Years**. During this 18 years he was FEderal Bar Council President 1979-1980. He currently holds active membership in New York City, New York State and the American Bar Associations and is a Fellow, American College of Trial Lawyers among numerous other positions.

"Judge" Tyler Esq. may be on a first name basis with every Federal Judge in the Second Circuit including almost certainly with Chief Judge Griesa who improperly, refused to recuse himself even after TOM 12/29/93 letter Notice. TOM acknowledges that "Judge" Tyler Esq. probably receives exceptional professional courtesy at every USDC in the Second Circuit. He may receive exceptional professional courtesy at other Federal Courts **perhaps even at the USSC** especially if "Judge" Tyler Esq. decides to assume personal defense of PBW&T against TOM case.

However, "Judge" Tyler Esq. has been paid substantial sums of partnership **profits for Eighteen Years** due to all PBW&T client retainer and fee payments solely as an attorney! PBW&T Partner John Winter Esq. has handled all PBW&T pleadings from 6/90 through today's date ie. 5½ years. It is **significant** that Attorney Winter was selected by PBW&T to **act Pro Se for PBW&T** from time of service in March 1994 to date. All PBW&T letters to USDC SDNY and Second Circuit Judges had letterhead stationary with Harold R. Tyler Jr. Esq. the first thing that any Judge saw!

"Judge" Tyler Esq., as a Respondent/Defendant, is equally liable for all of Winter/PBW&T U.S. Constitutional violations, violations of Fed. R. Civ. P. 11 and NYS Judiciary Law § 487, etc. damages award against him personally, just as each of the 34 PBW&T Partners are liable for damages. Moreover, Attorney Cuomo Esq., partner in Willkie, Farr & Gallagher since 2/6/95, adds a "deep pocket" additional defendant to further reduce potential financial annoyance to "Judge" Tyler Esq..

However, it is possible that after five Federal Judges have "protected "Judge" Tyler Esq." that all five Federal Judges have been deceived! TOM made several visits to PBW&T to hand deliver pleadings. **Every time**, that Tom met with one or more Lawyer Receivers they uniformly said "Oh, this is the Rockland County Case". TOM always thought this was ignorance because since 1/14/94 PBW&T has been sued totally independent of Rockland County. However, these Lawyers may be 100% correct. PBW&T

and "Judge" Tyler Esq. may have **NO FINANCIAL RISK.** Rockland County may pay every bill and every damages claim against PBW&T and Tyler. This would mean that this Federal Court System has been induced to violate all these laws solely to maintain the myth that PBW&T will always win! Clearly, even these five Federal Judges want to know if this fact is true.

The USSC should consider the "**Precedent**" that TOM 5½ year total denial of two private citizens' rights in both State and also Federal Courts will have **if the USSC denies TOM Certiorari**. TOM has not only been denied "Civil Rights" but also TOM has been denied even one hearing in four courts in two Court Systems. Three of these four court "orders" on their very face are **not Res Judicata** but 2d Cir. has **entered an Injunction** preventing TOM from seeking any future legal remedies to which Tom is otherwise entitled. This "Precedent" effectively eliminates both State and Federal "judiciaries" under Constitutional Provisions in Art. III, Art. IV and Art. VI as the "independence of the judicial process" protectors whenever PBW&T or a similar type law firm acts as an "advocate".

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Thomas W. Moore
Thomas W. Moore

Mary L. Moore
Mary L. Moore

January 15, 1996

APPENDIX A

United States Court of Appeals
For the Second Circuit

Thomas W. Moore, et al
v.
NYS Court System, et al

94-9328 & 94-9333
NOTICE OF MOTION OF APPELLANTS FOR AS OF RIGHT HEARINGS AS GUARANTEED BY SECOND CIRCUIT LOCAL RULES 34 (c) & (d) & 8/3/95-11/10/95 MENTAL INCOMPETENCY OF "COUNSEL"

Judge whose order is being appealed: Griesa, T. Brief statement of the relief requested: Appellants made "Good Faith Effort" to notify this court of "An Emergency of unforeseen life threatening illness of counsel" to prevent a "firm date of argument" even being scheduled. Additionally, this court received two timely written notices of request of Oral Argument. Local Rules 34 (c) & (d) having been granted to other parties are not subject to DISCRETION of Panel.

"S/Thomas W. Moore"

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is denied.

Signed U.S.C.J.

UNITED STATES COURT OF APPEALS
FILED AND ENTERED
NOVEMBER 27, 1995
George Lange III, Clerk
SECOND CIRCUIT

Thomas W. Moore, et al v. NYS Court System, et al and Thomas W. Moore, et al v. County of Rockland, et al	:94-9328 & 94-9333 COURT CONSOLIDATED APPELLANTS AFFIDAVIT IN SUPPORT OF MOTION FOR AS OF RIGHT HEARINGS BOTH GUARANTEED BY SECOND SIRCUIT LOCAL RULES 34 (c), (d) AND 8/3/95-11/10/95 MENTAL INCOMPETENCY OF "COUNSEL"

STATE OF NEW YORK)

COUNTY OF ROCKLAND) SS.:

THOMAS W. MOORE, being duly sworn deposes and says:

1. From 8/2/95 through 11/10/95 I was subjected to two, "unforeseen, life threatening illnesses (Emergencies)". I have notified this court that I am acting as "Counsel for myself and my wife". These Unforeseen illnesses of Counsel equal any previously accepted attorney grounds for Postponement of Argument pursuant to Local Rule 34 (c). We perceive our right to postponement to constitute a U.S. Constitutionally guaranteed property right. **Why have we been denied this right by this court?**

2. On 8/2/95 a two hour surgery disclosed that I had a previously undiagnosed, life threatening, malignant tumor that wrapped around my nose in my sinuses and into my right eye.

3. Immediately, I notified Doctor Ng of this litigation and requested Saint Vincent's Hospital to notify this Court so that this court **would not schedule oral argument!**

4. I gave Doctor Ng this Court's name and address. He indicated to me that this notice would immediately be sent to this Court. Attached as **Exhibit 1 is a copy of the 8/3/95 data** (less the

10/12/95 scheduled date) that I gave to Doctor Ng. This letter, I now know was not sent until 9/95.

5. Silence by Saint Vincent's Hospital (after 8/3/95) caused me to **have Probable Cause to believe that this court would not schedule Oral Argument until I became able to re-function as Counsel.**

6. On 8/8/95 I underwent a five hour operation to remove this tumor. During this operation, I lost two pints of blood. To avoid possible AIDS, I was not given blood. This made me **physically incapacitated to act as Counsel.**

7. I was institutionalized and transferred to Saint Vincent's Hospital for extensive radiation treatment. This was the first of **three hospitalizations that prevent my performing as Counsel.**

8. After a two week, at home recovery, my Doctors discovered that a major infection had developed in my face. Antibiotic treatment caused two major ("tumors" as described by Doctor Ng) to occur on both sides of my nose right between my eyes. This prevented me from driving since I wear glasses.

9. These infections constituted a second life threatening unforeseen illness of "Counsel" to occur. Cat Scans were obtained and I was scheduled to receive: (1) Twenty-Seven (27) treatments of Radiation (2) One week in hospital and continuous Chemotherapy treatment (3) A second week in hospital for Antibiotic intravenous treatment.

10. This **second unforeseen illness lasted until 10/1/95** when I returned home and **collapsed.** This collapse is said to be normal due to my loss of 28 pounds. I went from 178 pounds to less than 150 pounds <u>in three weeks</u>. This further incapacitated me from acting as Counsel for myself or my wife.

11. I was **unable to travel** into New York City until <u>10/17/95</u> ie. <u>**FIVE DAYS AFTER**</u> ORAL ARGUMENT WAS <u>**SCHEDULED**</u> BY THIS COURT. I (for the

fourth week) entered Saint Vincent's Hospital for treatment. I again received continuous intravenous Chemotherapy and also twenty-one (21) new radition treatments.

12. The infection, although hopefully cured, continues to create physical problems. This consists of a one inche by three quarter inch (1" x 3/4") **hole right in the middle of my face!** I still have Sinusitis. Sinusitis caused me to develop large amounts of yellow, extremely heavy mucus that accumulates in my prior sinus cavities. This cavity is now one big space on the right side of my nose. This continuous draining mucus is disgusting to witness and disgusting (for me) to live with.

13. The above medical problem causes mucus discharges into both of my eyes. **This sticky mucus makes it difficult to see, read and prepare this motion!** It requires major reconstructive surgery in the future.

14. All of the aforementioned medical reasons have made me: (1) **physically institutionalized** (2) **physically incapacitated** and (3) **mentally incompetent from 8/3/95 through 11/10/95**. I tried to disclose this to the court's representative who telephoned me on or about 10/10/95. **I did not legally waive my rights under local rules 34 (c) and (d)!**

15. This court had no right to demand I waive my rights especially considering this court's knowledge of my illness on 10/10/95. **It was my understanding** that the court **misrepresented** both Local Rules 34 (c) and (d) during this telephone call on or about 10/10/95.

16. I understood that unless I authorized elimination of Oral Argument that this Panel of three Judges would DENY our Appeals. **Fear of Appeals DENIAL is the only grounds** (even being incompetent) upon qhich I agreed to forego Oral Argument.

17. This telephone call constitutes an unconstitutional violation of both of our property

rights. Moreover, I felt intimidated! This cannot result in legal waiver.

18. **I cannot be held legally responsible for any act that I did or failed to do from 8/3/95 through 11/10/95.**

19. Attached Exhibit 2 is a copy of my Wife's letter to our panel on 9/26/95. This constitutes her best effort to comply with Local Rule 34 (c) for notice to the court of our Motion for Postponement of Oral Argument.

20. Attached Exhibit 3 is this **Court's refusal to comply with Local Rule 34 (c)**. This is a copy of letter datd 10/6/95 by Kathleen Brouwer for George Lange III, Clerk of the Second Circuit Court addressed to my wife "after you have discussed this with your husband". This constitutes a second violation of our constitutionally protected property rights!

21. We submit herewith a "Statement Pursuant to Local Rule 34" - "Each of the parties will be given an opportunity to file **a statement** setting forth reasons for hearing oral argument". We consider this Second Circuit Local Rule 34 (d) to constitute a second U.S. Constituionally guaranteed property right **that this Court has denied to both of us**.

Sworn to before me this 16 "S/Thomas W. Moore"
Day of November, 1995.

Patricia E. Ryan
Notary Public, State of New York
Qualified in Rockland County
No. 4983380
Commission Expires June 24, 1996

J.P. TRACY NG, M.D.
DEPARTMENT OF RADIATION

St. Vincent's Hospital & Medical Center
153 West 11th Street
New York, New York 10011

Tel #212-604-8697
Fax #212-604-8701

September 19, 1995

United States Court of Appeals
for the Second Circuit
Office of the Clerk
Room 1702
United States Courthouse
40 Foley Square
New York, New York 10007

RE:

1. **Your Official Notice of Oral Argument certain of Appeals #94-9328 and #94-9333 on 10/12/95**
2. **Request Continuance of 10/12/95 Oral Argument to (on or about 11/13/95) due to major Surgery; infection treatment and therapy of Pro Se Plaintiff Appellant Thomas M. Moore.**

Dear Panel Member Judge:

My patient, Thomas M. Moore, has requested that we submit this letter for Oral Argument Continuance flow currently scheduled 10/12/95 to 11/13/95.

Mr. Moore received emergency surgery at which I assisted for cancer of both the sinus cavity and also the right eye on August 8, 1995. He is currently an in-patient receiving chemotherapy and radiation as a pre-operative and possibly definitive regimen. His therapy will be delivered daily and will last at least until early October. He will require at least two months time to recuperate from treatment.

Respectfully submitted,

J. P. Tracy Ng, M.D.
Attending

JPTN:yo

139 Sleepy Hollow Lane
Congers, New York 10920-1515
September 26, 1995

U.S. Court of Appeals
U.S. Courthouse
Foley Square
New York, NY 10007

Re: Docket No. 94-9328 (L)

Dear Sir:

In reply to your recent notice of oral argument I wish to request an adjournment. My husband, Thomas W. Moore, is at present a patient in St. Vincent's Hospital 153 West 11 Street, New York City, New York 10011. His doctor is John Tracy Ng, M.D. of the Radiation/Oncology Department (212) 604-8696. Dr. Ng is at present sending you a report on my husband's condition which is quite serious.

Please consider this adjournment and we will notify you when Thomas Moore is able to appear at an oral argument.

Sincerely,

Mary L. Moore

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
United States Courthouse
40 Foley Square - Room 1702
New York, New York 10007

GEORGE LANGE III
CLERK

(212) 791-0103

October 6, 1995

Mrs. Mary L. Moore
139 Sleepy Hollow Lane
Congers, New York 10920

Re: Moore v. NYS Court System, 94-9328

Dear Mrs. Moore:

This is to confirm our telephone conversation today in which I told you that the Court was unable to grant an adjournment of oral argument in the above referenced case.

As we discussed, neither you nor your husband are under any obligation to appear for oral argument. If you wish, the Court will decide your appeal based on the arguments set forth in your briefs, which will be thoroughly reviewed. Many litigants proceed this way. On the other hand, should you decide to appear, the Court will allow you to say a few words on your husband's behalf as well as for yourself as appellant, if you so choose.

After you have discussed this with your husband, please call the Calendar Section at (212) 791-1067 to let them know whether or not you will appear for oral argument.

Sincerely,

George Lange III, Clerk
by

Kathleen Brouwer
Operations Manager

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Thomas W. Moore, et al:	**94-9328 & 94-9333** COURT
v.	CONSOLIDATED APPELLANTS
NYS Court System, et al	STATEMENT IN SUPPORT OF
and	MOTION FOR AS OF
Thomas W. Moore, et al	RIGHT HEARINGS **GUARANTEED**
v.	**BY SECOND CIRCUIT**
County of Rockland, et al	**LOCAL RULE 34 (d)**

STATEMENT WHY ORAL ARGUMENT IS NECESSARY

Exhibit 4 hereto is a copy of the 10/18/95 filed O R D E R by HONORABLE JON O. NEWMAN, Chief Judge and HONORABLE RICHARD J. CARDAMONE and HONORABLE JOSE A CABRANES Circuit Judges. **Bold underlined portions of this Order conflict with the Law and Facts**. This would have been covered by Thomas W. Moore during Oral Argument - had Local Rule 34 (c) not been denied to Appellants in these two Court Consolidated Cases and Appeals.

Page 2, second par. erroneously states: "The first federal court suit challenges the state courts' handling of the state court **litigation. This Suit was properly dismissed against the private defendants, the law firm and the lawyer representing the defendants in the state court action, since the complaint failed to allege any governmental action by these two defendants**. The suit was properly dismissed against the remaining defendants who are protected either by judicial immunity or **in the case of the former governor, by Eleventh Amendment immunity."**

Third par. The second suit challenges the termination of Mary Moore's employment. This suit was properly dismissed because on the face of the complaint, **the suit is barred by res judicata arising from the state court litigation**, and, in addition, is barred by the three-year statute of limitations since it was filed more than three years after the employment termination.

Third par. first page: "**the judgments of the District Court** be and they hereby are **AFFIRMED**."

THE LAW WAS INTENTIONALLY MISREPRESENTED BY APPELLEES

This Panel's legal and factual error was directly caused by false statements of both Law and Facts contained in Patterson, Belknap, Webb and Tyler and Winter's Appellees Brief (Hereafter "PBW&T"). Our **Central Theme** in both our Brief and also our Reply Brief, **is intentional deceit of three Prior Courts by PBW&T.** This constitutes violation of FRCP Rule 11. Due to Exhibit 4 this intentional deceit of Courts resulted in the **fourth violation** of New York State Judiciary Law § 487 by PBW&T.

PBW&T Brief is SILENT: Nowhere does PBW&T attempt to rebut FRCP Rule 15(a) interpretation: "Although leave to replead is within the discretion of the district court, refusal to rant it without any justifying reason is an abuse of discretion." Cortec Industries, Inc. v. Sum Holding 949 F 2d 42, (43 2nd Cir. 1991).

Our 11/15/94 Complaint (Brief Pages 8, 13, 22 through 25) contains **260 factual valid causes of action** against both PBW&T and the six Justices. All of these 260 are factual and documented **evidence of the Conspiracy** between PBW&T: (1) six Justices (2) Cuomo as Governor and/or (3) The NYS Court System. Our 11/15/94 evidence is neither denied by PBW&T nor the district court. **We appealed:** (1) the summary judgement dismissal ("lack of a Single Factual Valid Cause of Action"). **(2) the FRCP 15 (a) denial with no reason stated.** How can this Panel **AFFIRM** a district court order that constituted "Abuse of Discretion" and Silence by PBW&T?

> Page 5 PBW&T states: "Judge Griesa dismissed - Moores failed to state a claim for conspiracy involving Mr. Winter and PBW&T because - Mr. Winter and PBW&T did not act under color of state law and all state actors were immune from suit."

Page 13 PBW&T states: "When government entities or officials, with whom private individuals like PBW&T and Mr. Winter allegedly conspire, are held to be immune from suit, no "conspiracy" under color of state law can occur. - Therefore, no section 1983 conspiracy claim can be maintained. See Polur v. Raffe, 727 F. Supp. 810, 816 (S.D.N.Y. 1989), **aff'd in relevant part**,. **912 F. 2d 52 (2d Cir. 1990)** - The state court judges with whom Mr. Winter allegedly conspired are immune - Therefore, because these state court judges are immune from suit, the Moores cannot maintain a civil rights conspiracy claim against Mr. Winter and PBW&T."

PBW&T deceived this Panel as to Law in Polur v. Raffe, supra. (2d Cir. 8/22/90) 53, "5. **Conspiracy Finding that judicial immunity bars civil rights claims against judge does not require dismissal of action against private parties who are accused of conspiring with judge**. 42 U.S.C.A. § 1983." repeated on page 56 left hand column. See Dennis v. Sparks, 449 US 24, 66 L. Ed 185 101 S. Ct. 183 (USSC 11/17/80) Holding "Action under 42 USCS § 1983 against private parties who allegedly conspired with state judge, held maintainable despite judge's immunity" See Srubar v. Rudd, 875 F. Supp. 155, 156, (S.D.N.Y. 12/9/94) 11. "To state § 1983 claim under joint participation theory, plaintiff must allege that at least one conspirator was agent of state action under color of state law, and must allege with particularity **(Tom gave 260 FVCAs)** that public entity conspired with private defendants to deprive of rights;-".

PBW&T and Winter **are liable to Appellants for conspiracy** under 42 USC § 1983 as private defendants for 260 Factual Valid Causes of Action in our 11/15/94 complaint, with: (1) six state Justices (2) Governor Cuomo and/or (3) the NYS Court System **regardless of the public entity immunity as JOINT PARTICIPATION.**

PROCEEDINGS IN STATE COURTS WAS **NOT LITIGATION**

Page 1, PBW&T falsely asserts: "These cases - are the latest attempt by Appellants - to relitigate Ms. Moore's termination - in June 1990".

Our Reply Brief page 6 states: - "**Proceedings begin** when a Request for Judicial Interention was filied and a Justice of the NYS Supreme Court was assigned thereto. This occurred on 10/4/91. Article IV § 1 of the US Constitution required for "Full Faith and Credit" of "judicial Proceedings" **allegedly occurred** in NYS from **10/4/91 through 7/23/93**. - Art IV § 1 also requires: "Congress may - prescribe the Manner in which such - Proceedings shall be proved, and the Effect thereof"

Our Reply Brief on Page 12 & 13 states: "Winter 7/31/91 Answer, **per CPLR 3211 (e) Waived "Arbitration and Award"**. - Winter (PBW&T and Winter) 9/27/91 Motion further deceived Justice Lefkowitz - (PBW&T) intentionally omitted these facts: Mary: (1) was not present at this alleged hearing 3/26/91 (2) was not represented on 3/26/91 (3) did not even discover that said alleged "Arbitration Hearings" occurred until **10/1/91** ie over six months ex post facto, - (4) did not discover until **5/94** that said "Arbitration" was **between Grant v Donnellan** ie, no adversarial contest."

But for **litigation to occur** in the NYS Court system from 10/4/91 through 7/23/94 **REQUIRES** the 3/26/91 Arbitration Hearings be a valid "judicial Proceedings" **against Mary !**

FIRST: If said 3/26/91 hearings did not "Judicially examine" Mary's actions from 3/2/87 through 9/21/90, the entire NYS Court System "Proceedings from 10/4/91 through 7/23/93" were not "judicial Proceedings under Article IV § 1 of the US Constitutuion".

SECOND: If the NYS "Proceedings" are not granted "Good Faith and Credit" they are not "Judicial Proceedings". Justices are not "legally"

entitled to absolute judicial immunity for **NON JUDICIAL ACTS.** All of the NYAG and PBW&T legal citations both at the district court and before this Panel support this Fact.

Our Reply Brief Pages 12 through 17 cover the fact that neither the 12/3/91 alleged NYS Court Order nor the alleged 4/29/93 NYS Court Order state: "This Order is **on the merits**" or "This Order is **with prejudice**" Garg v. Albert Einstein College of Medicine of Yeshivia Univ. 747 F. Supp. 231, 233, wording in Garg, supra. but PBW&T omits: "**Prerequisite to the application of that standard is that the dismissal of original actions be on merits**". PBW&T further deceives this Panel by citing Stanley v. Bertram-Trojan, Inc., 781 F., Supp. 218 (S.D.N.Y. 1991) "Page 219 states **Judgement** Dismissal with Prejudice constitutes final judgment on merits and bars any future suits based on the same cause of action."

"Absolute immunity is designed to free the **judicial process** from the harassment and intimidation associated with litigation" Burns v. Reed, 500 US ___, 114 L. Ed. 547, 563, 111 S. Ct. __. Based upon these Facts and Law neither the NYS Court System Judiciary nor the six NYS Justices are entitled to "**Absolute Judicial Immunity**" based upon their acts in Mary's case.

ELEVENTH AMENDMENT LAW ONLY PROVIDES **QUALIFIED IMMUNITY**

Our reply Brief, Page 31 states: Dwyer v. Regan, 777 F. 2d 825, (2d Cir. 185). "Where a suit is brought against (Cuomo) in (Cuomo's attorney) (capacity) suits for monetary awards from a state official in his individual capacity - are not barred (by the Eleventh Amendment)' - Butz v. E conomou, 438 U.S. 478, 484 "officials of the Executive Branch exercising discretionary functions - need - only **qualified immunity based upon good faith and reasonable grounds**" (Cuomo acts clearly were not made in good faith)" and unreasonable grounds.

All state entities herein are entitled to only qualified immunity (Cuomo, six Justices, NYS Court System). Burns v. Reed, 114 L. Ed. 563, supra. 571, 'it [is] the nature of the function performed, not the identity of the actor who perform[s] it, that inform[s] our immunity analysis' Forrester v. White, 284 US 219, 229, 98 L Ed 2d 555, 108 S Ct 583 (1988) (denying absolute immunity to a judge sued for a non-judicial act)" 564, "the qualified immunity defense has evolved, it provides ample support to all but the plainly incompetent or those who knowingly violate the law" Malley, supra, - Mitchell, - "Where an official could be expected to know that his conduct would violate statutory or constitutional rights, he **should be made to hesitate**'" - Quoting Harlow v. Fitzgerald, 457 US 800 (at 819) (1982) "replacing the common-law subjective standard with an objective standard that **allows liability** only where the official violates "clearly established statutory or constitutional rights of which a reasonable person would have known" Harlow, supra, at 818, -

PBW&T and Winter are liable to Appellants for conspiracy with Cuomo, or any one of these six Justices, or the NYS Court System since what was done from 10/4/91 through 7/23/93 is clear violations of the US Constitution. Moreover state officials are only sued for damages as an attorney for his/her personal assets.

CONCLUSION

Neither Coumo nor all six Justices ever appeared to Answer as private individuals (as attorneys liable under NYS Judiciary Law § 487) Judge Griesa's Summons and Complaint. This w as served on all seven individuals on 2/28/94 by a licensed NYS Process Server. This Process Server also completed supplemental mailed CPLR Service with a filed Certified Return Receipt as evidence of the proper supplemental service. We request this Panel to enter a Reversal Order and to grant

us Default Judgment against these seven private individuals for treble damages due to Mary's wrongful job termination.

Respectfully Submitted:

"S/Thomas W. Moore" Pro Se
Counsel for Oral Argument
for Thomas W. Moore Pro Se
and Mary L. Moore Pro Se
(914) 268-6704

JON

SDNY
94-cv-208
Griesa, J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 18th day of October one thousand nine hundred and ninety-five.

PRESENT: HONORABLE JON O. NEWMAN,
Chief Judge.
HONORABLE RICHARD J. CARDAMONE,
HONORABLE JOSE A. CABRANES,
Circuit Judges.

UNITED STATES COURT OF APPEALS
FILED & ENTERED
OCTOBER 18, 1995
George Lange III, Clerk
SECOND CIRCUIT

----------x
THOMAS W. MOORE, ET AL.
Plaintiffs-Appellants,
v.
NEW YORK STATE COURT SYSTEM, ET AL.,
Defendants-Appellees,
----------x

O R D E R

Appeal from the United States District Court for the Southern District of New York (Thomas P. Griesa, Chief Judge).

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York and was taken on submission.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgments of the District Court be and they hereby are AFFIRMED.

Thomas and Mary Moore appeal pro se from the judgments entered November 1, 1994, dismission their complaints brought pursuant to 42 U.S.C. § 1983. The complaints attempted to challenge the termination of Mary Moore's employment as Director of Rockland County's Veterans Services Agency, an event that occurred in June 1990. The termination was originally challenged in state court, where a judgment in favor of the defendants was affirmed on appeal. See Moore v. County of Rockland, 192 A.D.2d 1021, 596 N.Y.S.2d 908 (2d Dep't 1993).

The first federal court suit challenges the state courts' handling of the state court litigation. This suit was properly dismissed against the private defendants, the law firm and the lawyer representing the defendants in the state court action, since the complaint failed to allege any governmental action by thee two defendants. The suite was properly dismissed against the remaining defendants who are protected either by judicial immunity or, in the case of the former governor, by Eleventh Amendment immunity.

The second suit challenges the termination of Mary Moore's employment. This suit was properly dismissed because on the face of the complaint, the suit is barred by res judicata arising from the state court litigation, and, in addition, is ba rred by the three-year statute of limitations since it was file more than three years after the employment termination.

Though the District Court dismissed the suits by converting the dismissal motions into motions for summary judgment, no issue arises as to converting the dismissal motions since the suits were subject to dismissal for failure to state a claim; the complaints recounted the state court proceedings and thereby revealed that the federal court complaints were subject to dismassal for failure to state a claim on which relief can be granted.

Appellees have asked for relief to prevent the Moores from pursuing litigation against them arising out of Mary Moore's termination of employment. Such relief is fully warranted.

Accordingly, it is hereby ORDERED that Thomas Moore and Mary Moore are enjoined from filing in any federal court any lawsuit challenging in any way the termination of Mary Moore's employment by Rockland County, without first seeking and obtaining leave to file from the court in which the lawsuit is sought to be filed. Violation of this injunction is punishable by contempt penalties.

This summery order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in the unrelated cases before this or any other court

Chief Judge

Circuit Judges

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

THOMAS W. MOORE, MARY L. MOORE,
Plaintiffs-Appellants,

- against -

NOTICE OF APPEAL

NEW YORK STATE (Hereafter NYS) COURT SYSTEM, MARIO M. CUOMO as Governor of NYS, ANN T. MIKOLL as Justice of NYS Supreme Court Appellate-Division Third Department (Hereafter JSC AD-3d), PAUL J. YESAWICH JR. JSC AD-3d, D. BRUCE CREW III JSC AC-3d, THOMAS E. MERCURE JSC AD-3d, NORMAN L. HARVEY JSC AD-3d, JOAN B. LEFKOWITZ, JSC, PATTERSON, BELKNAP, WEBB & TYLER as a Partnership of Attorneys MARIO M. CUOMO as an Individual Attorney (Hereafter Esq.), ANN T. MIKOLL Esq., PAUL J. YESAWICH JR., Esq., D. BRUCE CREW III Esq., THOMAS E. MERCURE Esq., NORMAN L. HARVEY Esq., JOAN B. LEFKOWITZ Esq., JOHN D. WINTER Esq.,

94 CIVIL 0208 (TPG)

Defendants-Respondents.

----------x

NOTICE is hereby given that Plaintiff-Appellant Pro Se Thomas W. Moore and Plaintiff-Appellant Pro Se Mary L. Moore hereby appeal to the United States Court of Appeals for the Second Circuit **from the JUDGEMENT** from the United States District Court, Southern District of New York, Honorable Thomas P. Griesa: entered in 94 CIVIL 0208 (TPG); entered on the 1st of November with Motion to Alter or Amend filed 11/15/94 Pursuant to Fed. R. Civ. P. 59 (e) **and DENIAL ORDER:** entered

on or about 11/18/94, therefore extending time to notice appeal until, at least, 12/19/94.

Dated: Rockland County N.Y.
December 5, 1994

"S\Thomas W. Moore" (6104)
Plaintiff Pro Se
139 Sleepy Hollow Lane
Congers, NY 10920-1515
(914) 268-6704

By "S\Mary L. Moore" (3424)
Plaintiff Pro Se
139 Sleepy Hollow Lane
Congers, NY 10920-1515
(914) 268-6704

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

THOMAS W. MOORE, MARY L. MOORE,
Plaintiffs,
- against -
NEW YORK STATE (Hereafter NYS) COURT SYSTEM, et al.,
Defendants.

94 Civ. 0208 (TPG)

ORDER

----------x

THOMAS W. MOORE, MARY L. MOORE,
Plaintiffs,
- against -
THE COUNTY OF ROCKLAND of New YOrk State, et al.,
Defendants.

94 Civ. 2678 (TPG)

----------x

On September 30, 1994 the court issued an opinion dismission both of these actions on motion of defendants. The court also ruled that plaintiffs' cross-motion in 94 Civ. 2678 for a default judgment and for sanctions should be denied. On November 1, 1994 a judgment was entered based on this opinion.

On November 15, 1994 plaintiffs filed a motion to alter or amend the judgment for other relief. This motion is denied in all respects.

SO ORDERED.

Dated: New York, New York
November 18, 1994

"S\Thomas P. Griesa, USDJ"

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

THOMAS W. MOORE, MARY L. MOORE, Plaintiffs,

94 CIVIL 0208 JUDGMENT (TPG)

- against -

NEW YORK STATE (Hereafter NYS) COURT SYSTEM, MARIO CUOMO as Governor of NYS, ANN T. MIKOLL as Justice of NYS Supreme Court Appellate-Division Third Department (Hereafter JSC AD-3d), PAUL J. YESAWICH JR. JSC AD-3d, D. BRUCE CREW III JSC AC-3d, THOMAS E. MERCURE JSC AD-3d, NORMAN L. HARVEY JSC AD-3d, JOAN B. LEFKOWITZ, JSC, PATTERSON, BELKNAP, WEBB & TYLER as a Partnership of Attorneys with Professional Corporations, MARIO M. CUOMO as an Individual Attorney (Hereafter Esq.), ANN T. MIKOLL Esq., PAUL J. YESAWICH JR., Esq., D. BRUCE CREW III Esq., THOMAS E. MERCURE Esq., NORMAN L. HARVEY Esq., JOAN B. LEFKOWITZ Esq., JOHN D. WINTER Esq.,

Defendants.

U.S. DISTRICT COURT FILED OCTOBER 28, 1994 S.D. OF N.Y.

----------x

THOMAS W. MOORE, and MARY L. MOORE, Plaintiffs,

94 CIVIL 2678 (TPG)

- against -

THE COUNTY OF ROCKLAND of New York State, C. SCOTT VANDERHOEF, as County Executive, JAMES HENNESSY, as Deputy County Executive, GERALD DONNELLAN, Individually, BERNARD FALLON, Individually, PATRICIA PRENDERGAST, Individually, JOHN GRANT, Individually, DOES ONE through FIVE HUNDRED,

Defendants.

----------x

The defendants in both cases having moved to dismiss, alternatively, defendants in 94 Civ. 0208 having moved to transfer the action to the Northern District of New York, plaintiffs having cross-moved in 94 Civ. 2678 for a default judgment and for sanctions, and the said motions having come before the Honorable THOMAS P. GRIESA, United States District Judge, and the Court on its own initiative having treated to motions to dismiss as ones for summary judgment, and the Court thereafter on October 5, 1994, having rendered its opinion (#73772); denying plaintiffs' cross-motion in 94 Civ. 2678 for a default judgment and for sanctions, and granting the motions of defendants in 94 Civ. 0208 and 94 Civ. 2678, and dismissing both actions, it is,

ORDERED, ADJUDGED AND DECREED: That plaintiffs' cross-motion for a default judgment and for sanctions be and it is hereby denied, and it is further,

ORDERED, that the motions of defendants in 94 Civ. 0208 and 94 Civ. 2678 be and they are hereby granted, and it is further ORDERED, that both action be and they are hereby dismissed.

DATED: New York, New York
October 28, 1994

"S\James M. Parkison"
Clerk

By: "S\Ronald A. Church"
Deputy Clerk

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 11/1/94

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

THOMAS W. MOORE, MARY L. MOORE, Plaintiffs,

94 CIV. 0208 (TPG)

- against -

NEW YORK STATE (Hereafter NYS) COURT SYSTEM, MARIO CUOMO as Governor of NYS, ANN T. MIKOLL as Justice of NYS Supreme Court Appellate-Division Third Department (Hereafter JSC AD-3d), PAUL J. YESAWICH JR. JSC AD-3d, D. BRUCE CREW III JSC AC-3d, THOMAS E. MERCURE JSC AD-3d, NORMAN L. HARVEY JSC AD-3d, JOAN B. LEFKOWITZ, JSC, PATTERSON, BELKNAP, WEBB & TYLER as a Partnership of Attorneys with Professional Corporations, MARIO M. CUOMO as an Individual Attorney (Hereafter Esq.), ANN T. MIKOLL Esq., PAUL J. YESAWICH JR., Esq., D. BRUCE CREW III Esq., THOMAS E. MERCURE Esq., NORMAN L. HARVEY Esq., JOAN B. LEFKOWITZ Esq., JOHN D. WINTER Esq.,

OPINION

Defendants.

----------x

THOMAS W. MOORE, MARY L. MOORE, Plaintiffs,

94 CIV. 2678 (TPG)

- against -

THE COUNTY OF ROCKLAND of New York State, C. SCOTT VANDERHOEF, as County Executive, JAMES HENNESSY, as Deputy County Executive, GERALD DONNELLAN, Individually, BERNARD FALLON, Individually, PATRICIA PRENDERGAST, Individually, JOHN GRANT, Individually, DOES ONE through FIVE HUNDRED,

Defendants.

----------x

These are two pro se cases by Thomas and Mary L. Moore, husband and wife. They arise out of Ms. Moore's alleged wrongful termination as Director of Rockland County's Veterans Services Agency and also out of a New York State court action unsuccessfully challenging that termination.

The defendants in both 94 Civ. 0208 and 94 Civ. 2678 move to dismiss. Alternatively, defendants in 94 Civ. 0208 move to transfer the action to the Northern District of New York. Plaintiffs cross-move in 94 Civ. 2678 for a default judgment and for sanctions.

Since matters outside the complaints are considered, the defense motions to dismiss will be treated as ones for summary judgment. As such, they are granted. Plaintiffs' cross-motion is denied.

FACTS

Ms. Moore was terminated from her Rockland County position in 1990. In 1991 Ms. Moore commenced an action in Supreme Court, Rockland County, against the County, the County Executive, the Deputy County Executive, the Assistant to the County Executive and another employee of Ms. Moore's agency. In this action, Ms. Moore made wide ranging allegations of violations of state law, discrimination in violation of the United States Constitution, and common law torts. On December 3, 1991 Justice Lefkowitz granted defendants' motion for summary judgment and dismissed the action. This ruling was affirmed by the Appellate Division, Third Department, on April 29, 1993. The decision was by Justices Crew, Harvey, Mercure, Mikoll, and Yesawich.

Ms. Moore has now brought two actions in federal court which are the subject of the present motions. In these actions she is joined by her husband.

In 94 Civ. 0208, plaintiffs sue the New York State Court System; Governor Cuomo in his official and individual capacities; the trial justice and the appellate justices who decided Ms. Moore's

state court action, sued in their official and individual capacities; Patterson, Belknap, Webb & Tyler and a partner in that firm, John D. Winter, who represented the defendants in the state court action. Plaintiffs allege that the various defendants conspired to violate the federal constitutional rights of plaintiffs by abusing the legal process in obtaining the dismissal of Ms. Moore's state court action. There is an allegation that Governor Cuomo participated in this conspiracy to protect his political future. One of the allegations is that defendants subjected plaintiffs to cruel and unusual punishment in violation of the Eighth Amendment by obtaining the dismissal of the lawsuit.

In 94 Civ. 2678 plaintiffs sue the County of Rockland; the current County Executive and the current Deputy County Executive, as well as the individual defendants sued in the prior state court action. With some minor variations, the allegations are the same as those made in the state court action.

DISCUSSION

94 Civ. 0208

This court lacks subject matter jurisdiction over many of the claims asserted in this action. The Eleventh Amendment to the United States Constitution provides:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Plaintiffs are apparently residents of New York, so that they are not citizens of "another State" or citizens of a "Foreign State." Although the Eleventh Amendment does not expressly forbid the federal courts from entertaining suits against a state by citizens of the same state, the Supreme Court has interpreted this provision as affirming a broad principle of sovereign immunity which does

prohibit such suits. Hans v. Louisiana, 134 U.S. 1 (1890); Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 98-99 (1984).

There is no waiver or limitations of sovereign immunity applicable to the claims in 94 Civ. 0208.

The immunity of the State of New York applies to an agency of the state and to its governor. Thus the immunity applies to the New York State Court System and to Governor Cuomo. Pennhurst, 465 U.S. at 98-99, 101. The doctrine also applies to the justices who decided the state court action. Stump v. Sparkman, 435 U.S. 349 (1978).

To the extent that the complaint attempts to allege ultra vires actions on the part of the above defendants, perhaps in the attempt to avoid the state immunity doctrine, these allegations are so general and so lacking in any factual substance that they must be dismissed as failing to constitute legally cognizable claims.

With regard to the Patterson Belknap firm and the partner in that firm who defended the state court action, there is nothing approaching a factually sufficient statement of a valid cause of action against these defendants.

The basic problem with 94 Civ. 0208 is that it is an attempt to make a collateral attack upon a final state court judgment, and this attack is in the form of extreme rhetoric purporting to be couched in legal theories. No valid cause of action is stated against any of the defendants, and the action is dismissed.

94 Civ. 2678

The doctrine of res judicata so clearly applies to the 94 Civ. 2678 action that little discussion is required. The complaint basically does nothing more than repeat the state court allegations. It is true that Mr. Moore has been added as a plaintiff and that the successors to certain of the former county officials have been added as defendants. It is also true that there

are certain additional theories relating to the First, Fifth and Fourteenth Amendments to the United States Constitution. But under well established law these differences do not avoid the application of res judicata. The fact remains that the federal court will not, and cannot, relitigate the issues decided by the state court.

CONCLUSION

The motions of defendants in 94 Civ. 0208 and 94 Civ. 2678 are granted and both actions are dismissed. Plaintiffs' cross-motion in 94 Civ. 2678 for a default judgment and for sanctions is denied.

SO ORDERED.

Dated: New York, New York
September 30, 1994

"S\Thomas P. Griesa" U.S.D.J.

APPENDIX D

SUPREME COURT - APPELLATE DIVISION
THIRD JUDICIAL DEPARTMENT

July 23, 1993

66853 - MARY MOORE, Appellant,
v
COUNTY OF ROCKLAND et al., Respondents

Motion for permission to appeal to the New York State Court of Appeals or to United States District Court denied, without costs.

MIKOLL, J.P., YESAWICH JR., MERCURE, CREW III, and HARVEY, JJ., concur.

APPENDIX E

SUPREME COURT - APPELLATE DIVISION
THIRD JUDICIAL DEPARTMENT

Decided and Entered: April 29, 1993 66853

MARY MOORE,
Appellant,

v

COUNTY OF ROCKLAND ET AL.,
Respondents

MEMORANDUM AND ORDER

Calendar Date: February 17, 1993

Before: Mikoll, J.P., Yesawich Jr., Mercure, Crew III and Harvey, JJ.

Reilly & Lewis (Gerald D. Reilly of counsel), White Plains, for appellant.

Patterson, Belknap, Webb & Tyler (John D. Winter of counsel), New York City, for respondents.

Mikoll, J.P.

Appeal (transferred to this court by order of the Appellate Division, Second Department) from an order of the Supreme Court (Lefkowitz, J.), entered December 3, 1991 in Rockland County, which, inter alia, granted defendants' motion for summary judgment dismissing the complaint.

Plaintiff, an employee of the Rockland County Veterans Service Agency (hereinafter VSA) since November 1973, was appointed director of the VSA in November 1981 by the County Legislature. She was reappointed to a four-year term by the County Legislature in 1983. There was a change in the Rockland County form of government in 1986 and in 1988 defendant County Executive reappointed her as director of the VSA. Under Executive Law § 357, the director of the VSA served at the pleasure of

the County Executive but had the power to appoint assistants and employees who served at the director's pleasure (see, Executive Law § 357 [1]).

Friction developed in the employment relationship between plaintiff, the County Executive and other County officials from October 1987 through June 1990, including an ongoing feud between plaintiff and the County Executive over the employment of defendant Gerald Donnellan as a veterans counselor. Plaintiff disciplined Donnellan several times contrary to the County Executive's directives. In June 1990, the County Executive allegedly fired plaintiff for insubordination.

Plaintiff then commenced this action alleging seven causes of action, claiming that defendants (1) conspired to unlawfully discharge plaintiff, cause her mental distress, defraud her and violate State law, (2) defrauded her, (3) denied her hearing in violation of Civil Service Law § 75, (4) intentionally inflected emotional distress on her, (5) terminated her employment in violation of Civil Service Law § 75-b, (6) violated a provision of the Administrative Code of Rockland County requiring the County Executive to notify the County Legislature of plaintiff's termination, and (7) violated plaintiff's Federal constitutional rights under 42 USC § 1983. Defendants' motion to dismiss the complaint for failure to state a cause of action or, in the alternative, for summary judgment was granted and the complaint dismissed by Supreme Court. This appeal by plaintiff ensued.

Supreme Court did not err in dismissing plaintiff's complaint. The order of Supreme Court therefore should be affirmed. Supreme Court properly dismissed plaintiff's causes of action for conspiracy, fraud and intentional infliction of emotional distress because plaintiff was an employee at will and there is no allegation that there was an express limitation on the County Executive's right to terminate her (see, Murphy v. American Home Prods. Corp., 58 NY2d 293, 300-301; Novinger v Eden Park Health Servs., 167 Ad2d 590, lv denied 77 NY2d 810). Under Executive Law § 357 (1), plaintiff served at the pleasure of the County

Executive. Absent a contractual constitutional or statutory limitation on the County Executive's power, her employment as director could be terminated at any time (see, Murphy v. American Home Prods. Corp., supra; see also, Connolly v. Macklowe Real Estate Co., 161 AD2d 520, 522).

Plaintiff's first cause of action, couched in terms of conspiracy, states, in reality, no more than a claim for wrongful discharge and is merely an attempt to evade the fact that there is no cause of action for the wrongful discharge of an at-will employee unless certain exceptions are shown to exist, none of which are present here (see, Murphy v American Home Prods. Corp., supra, at 300-302; see also, Wieder v. Skala, 80 NY2d 628).

Plaintiff cannot rely on an estoppel theory, as estoppel requires plaintiff's reasonable reliance upon a representation or act evincing defendants' position (see e.g., Triple Cities Constr Co. v Maryland Cas. Co., 4 NY2d 443, 448), which plaintiff has not demonstrated existed here, especially in light of the provisions of Executive Law § 357 (1).

Plaintiff's cause of action for fraud lacks the required specificity as to the misrepresentation allegedly made by defendants (see, CPLR 3016 [b]; see also, Monaco v. Saint Mary's Hosp. of Troy, 184 AD2d 985). Moreover, as plaintiff was an employee at will, she is unable to demonstrate that she reasonably relied on any misrepresentations (see, Bower v Atlis Sys., 182 AD2d 951, 953, lv denied 80 NY2d 758).

Plaintiff's cause of action for intentional infliction of emotional distress fails for lack of any allegation of defendants' extreme or outrageous conduct that could be characterized as "'***utterly intolerable in a civilized community'" (Murphy v American Home Prods. Corp., supra, at 303, quoting Restatement [Second] of Torts § 46 [1], comment d; see also, Methe v General Elec. Co., 150 AD2d 853, lv dismissed 74 NY2d 842; Vardi v Mutual Life Ins. Co. of N.Y., 136 AD2d 453, 456). Additionally, plaintiff may not evade the at-will contract rule by merely asserting her claim for wrongful

discharge under the guise of a claim for intentional infliction of emotional distress (see, Murphy v American Home Prods. Corp., supra, at 303).

Plaintiff's argument that her notice of claim sufficiently identified her causes of action for conspiracy, intentional infliction of emotional distress and violation of Rockland County law fails, as a claimant may not raise in the complaint causes of action or legal theories that were not directly or indirectly mentioned in the notice of claim and that change the nature of the earlier claim or assert a new one (see, Wanczawski v City of New York, ____ AD2d ____ [Oct. 8, 1992, 1st Dept]; Mazzilli v City of New York, 154 AD2d 355, 357; Demorcy v City of New York, 137 AD2d 650, 650-651). Here, the notice of alia fails to state intentional emotional distress as part of the nature of the claim and did not give adequate information to alert defendants to investigate the cause of action; it is therefore barred (see, Wanczawski v City of New York, supra; Mojica v New York City Tr. Auth., 117 AD2d 722; cf., DeLeonibus v Scognamillo, 183 AD2d 697).

The notice of claim likewise failed to specify which provision of the Rockland County Charter was violated and consequently did not sufficiently identify a cause of action for violation of any Rockland County law. Further, the latter cause of action asserts a violation of Administrative Code of Rockland County § 5-32E, while the notice of claim mentions only the County Charter. Thus, defendants were not given sufficient notice of the alleged Administrative Code violation to enable them to investigate the claim.

The conspiracy claim for wrongful discharge in the complaint was not sufficiently identified in the notice of claim in that the wrongful discharge therein was stated to be in violation of certain statutes, the County Charter and the Federal Due Process Clause, while the wrongful discharge in the cause of action for conspiracy alleged in the complaint was based primarily on common-law

wrongful discharge. The notice was therefore deficient in this respect.

Plaintiff's cause of action based on defendants' alleged violation of Civil Service Law § 75-b was properly dismissed, not because the complaint was facially deficient for failing to state the particular law, rule or regulation violated, as Supreme Court found, but rather because of plaintiff's testimony given at the General Municipal Law § 50-h hearing. That testimony met defendants' burden of demonstrating a prima facie entitlement to summary judgment (see, Alvarez v Prospect Hosp., 68 NY2d 320, 324). The testimony showed that plaintiff never reported actions that she reasonably believed established improper governmental action, necessary for a Civil Service Law § 75-b [2] [a]; Matter of Plante v Buono, 172 AD2d 81, 85-86, lv denied 79 NY2d 756). Moreover, as Civil Service Lawl § 75-b applies only to retaliatory discharges by public employers, not to actions by fellow public employees (see, Civil Service Law § 75-b [2] [a]), the cause of action for violation of Civil Service Law § 75-b may not be maintained against the individual defendants.

Plaintiff's cause of action based on violations of 42 USC § 1983 relating to gender and 1st Amendment discrimination claims was properly dismissed. As to her gender discrimination claim, plaintiff failed to present sufficient admissible proof to rebut defendants' prima facie showing of their entitlement to summary judgment (see, Alvarez v Prospect Hosp., supra; see also, Heffernan v Colonie Country Club, 160 AD2d 1062, 1063). Plaintiff's 1st Amendment claim was also properly dismissed (see, Elrod v Burns, 427 US 347, 367-368). Plaintiff, as director of the VSA, was a government official in a policy-making position, had discretion in her job functions and was responsible for dissemination of information to the public relating to an outreach program (see, Savage v Gorski, 850 F2d 64, 68-69).

Finally, we reject defendants' alternative argument that Supreme Court's dismissal of plaintiff's conspiracy and intentional infliction of emotional distress claims was proper because

they were not commenced within the one year and 90-day limitation period set forth in General Municipal Law § 50-i (1) and are therefore time barred. These two causes of action did not arise until plaintiff's termination, when all the elements of her cause of action for each claim had been satisfied (see, e.g., Vitale v Hagan, 132 AD2d 468, 469, mod on other grounds 71 NY2d 955). The summons was served on June 20, 1991, well within the allotted time.

We have examined plaintiff's other arguments for reversal and find them to be without merit.

Yesawich Jr., Mercure, Crew III and Harvey, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

"S\Michael J. Novack"
Michael J. Novack, Clerk

APPENDIX F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

----------x

MARY MOORE — Index No. 7036/91
Plaintiff

- against -

THE COUNTY OF ROCKLAND et al
Defendants

----------x

Lefkowitz, Jr.

Plaintiff, the former Director of the Veterans Service Agency for Rockland County, as sued her former employer and various public officials for perceived wrongs that resulted in her allegedly improper termination. Defendants move for summary judgment to dismiss all seven causes of action. Plaintiff cross-moves to amend the complaint to cure certain procedural defects.

Cause of action Nos. 1 (for conspiracy), 4 (mental distress) and 6 (pursuant to certain provisions of the Rockland County Charger) are dismissed for failure to sufficiently identify these claims in the notice of claim. Rosen & Bardunias v County of Westchester, 158 AD2d 679 (2nd Dep't 1990), cert. den., ____US____, 111 S. Ct. 962 (1991). See Caselli v City of New York, 105 AD2d 251 (2nd Dep't 1984). The second cause of action in fraud and for material misrepresentation is dismissed because plaintiff was an employee at will. Murphy v American Home Prods. Corp., 58 NY2d 293 (1983); Executive Law § 357.

The third cause of action based on section 75 of the Civil Service Law is dismissed as plaintiff was not a civil servant within the meaning of that statute and had no property right to continued employment. Executive Law § 357. Additionally, the stigmatization claim relating to publications that occurred after termination of her job do not implicate due process rights. Gentile v Wallen, 562 F2d 193, 198 (2nd Cir. 1977); see Bishop v

Wood, 426 US 341, 348-49 (1976); Paul v Davis, 424 US 693, 710 (1976). Furthermore, the charges of insubordination are not sufficient to require that a name clearing hearing be held. Matter of Lutwin v Allenge, 58 NY2d 889 (1983); Saraceno v City of Utica, 733 F. Supp. 538 (DCNY ND 1990); see New York Health & Hosp. Corp. v Local 2507, 139 Misc. 2d 376 (Supreme Ct New York 1988).

The fifth cause action premised on the whistle blower statute, Civil Service Law § 75-b, is dismissed because plaintiff has failed to identify any law, rule or regulation allegedly violated. Connolly v Harry Mackowe Real Estate Co., 161 AD2d 520 (1st Dep't 1990).

The seventh/cause of action to the extent it duplicates the other causes of action but uses section 1983 of 42 USC as its fulcrum is dismissed for the reasons previously expressed. Brody v Leamy, 90 Misc. 2d 1 (Supreme Ct. Westchester 1977). To the ex tent that plaintiff claims age and sex discrimination those claims are also dismissed as plaintiff was replaced by an older person of the same sex. Goldberg v. B. Green & Co. Inc., 836 F. 2d 845 (4th Cir. 1988) (construing the Age Discrimination in Employment Act of 1967, 29 USC §§621-34). Insofar as plaintiff claims violation of her First Amendment rights, they too are dismissed upon the ground that plaintiff was a policy maker and subject to discharge for speaking out contrary to her employer's wishes. Branti v Finkel, 445 US 507 (1980); Elrod v Burns, 427 US 347 (1976); Savage v Gorski, 850 F.2d 64 (2nd Cir. 1988).

The claim for punitive damages is dismissed. Sharapata v Town of Islip, 56 NY2d 332 (1982); City of Newport v Fact Concerts, Inc., 453 US 247 (1981).

Defendants correctly point out that the complaint fails to allege compliance with section 50-e of the General Municipal Law and improperly states damages against a municipality in violation of CPLR 3017 (c). Plaintiff's cross-motion to amend the complaint to cure these non-jurisdictional defects is denied as academic.

The Court has considered the following papers on these motions: (1) defendant's motion to dismiss dated September 26, 1991 with supporting affidavits of James Anderson and John Winter dated September 25, 1991 and exhibits A-D; (2) notice of cross-motion dated November 1, 1991 with affirmation of Gerald Reilly and affidavit of Mary Moore both dated November 1, 1991 with exhibits A-PP; (3) order dated October 29, 1991; (4) transcript of 50-H examination; (5) defendants' memoranda of law (original and reply) plaintiff's memorandum of law; and (6) plaintiff's surreply.

This constitutes the decision and order of the Court.

Dated: December 3, 1991 Entered: "S\J.S.C."

Reilly & Lewis, Esqs.
Attorneys for Plaintiff
175 Main Street
Suite 800
White Plains, NY 10601

Patterson, Belknap,
Webb & Tyler, Esqs.
Att. for Defendants
30 Rockefeller Plaza
New York, NY 1011

APPENDIX G

United States Court of Appeals
For the Second Circuit

Thomas W. Moore, Mary L. Moore, 94-9333
Plaintiff-Appellants
v.
COUNTY OF ROCKLAND, et al
Defendant-Respondents.

NOTICE OF MOTION for a disinterested panel to HEAR OUR APPEAL

For a DISINTERESTED PANEL OF JUDGES to decide our appeal based only upon facts and law.

"S/Thomas W. Moore"
"S/Mary L. Moore"

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is denied; normal assignment procedure will apply.

Signed U.S.C.J.

UNITED STATES COURT OF APPEALS
FILED
SEPTEMBER 14, 1995
George Lange III, Clerk
SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------x

Moore v. NAYS Court System, **PATTERSON**, BELKNAP, WEBB & TYLER, Et. Al.

:94-9328

APPELLANTS' AFFIDAVIT IN SUPPORT OF OUR MOTION TO OBTAIN A **DISINTERESTED PANEL** TO HEAR OUR APPEAL

----------x

STATE OF NEW YORK)
COUNTY OF ROCKLAND) SS.:

THOMAS W. MOORE and MARY L. MOORE, being duly sworn depose and say:

1. We, Thomas W. Moore (Hereafter "Tom") and MARY L. MOORE) (Hereafter "Mary") are appellants pro se in the above appeal and respectfully move this Court to obtain a **disinterested panel** to hear our appeal. You are hereby notified that matters in our attached Memorandum in Support, double your difficulty, but address entirely different problems than this affidavit.

2. Exhibit #1 hereto is Tom's: (a) 12/29/93 Letter to Chief Judge Newman. (b) **12/29/93 letter to Chief Judge Griesa**, (c) two USPS receipts dated 12/29/93 for Express Mail to both Judges. This Court should note that #EF675761917US is a USPS number by which Tom verified that **Judge Griesa's** letter and attached "Complaint" arrived at the **USDC** within the one day promised delivery date. (d) the "Complaint", page 1, that accompanied Tom's letter. (e) January 5, 1994 letter reply from Carolyn Clark Campbell, Chief Deputy Clerk with copy to Chief Judge Newman.

3. We request this Court to read Tom's one page 12/29/93 letter and examine each defendant. More importantly, we also ask you to be fully aware of the major "Conflicts of Interest" that both Judge Griesa and also the entire SDNY had on 12/30/93 and thereafter. Judge Griesa was notified **Patterson, Belknap, Webb & Tyler** (Hereafter

"PBW&T") and John D. Winter Esq. are named as fully liable defendants contained on "Complaint" page 1.

4. Tom sent this 12/29/93 letter to Judge Griesa for the same purpose that Tom today submits this Motion to this Second Circuit Panel of Judges. Tom knew that Harold R. Tyler Jr., Esq. had previously been a USDJ, SDNY from 1962 through 1975. Tom also knew that Twenty-One of the Partners/Attorneys in PBW&T had previously been law clerks for federal Judges. Defendants Winter and seven other Partners/Attorneys had worked for currently presiding USDJs, SDNY. Tom expected Judge Griesa as a matter of ethics to recuse any USDJ, SDNY who had these clear "Conflicts of Interest".

5. What Tom did not discover until 11/21/94 were the facts: (1) Judge Griesa and Judge Tyler served as USDJs SDNY in the same building from 1972 through 1974. (2) Judge Michael B. Mukasey, who was assigned to 94 Civ. 0208 (MBM) (Hereafter "0208") from 1/14/94 through 4/5/94, had been a Partner in PBW&T in 1987. (3) Judge Robert P. Patterson Jr. also a currently presiding USDY, SDNY, had also been a Partner in PBW&T in 1987.

6. Tom, being Pro Se, is not an attorney who would have access to membership lists or old Martindale and Hubbles from which to determine all Federal Judges who were prior Partners in PBW&T. Tom is further hampered by the fact that Tom cannot obtain membership lists of certain organizations and committees that Harold R. Tyler Esq. is a former or current member ie. (A) "Chairman, Standing Committee on Federal Judiciary 1986-1987" (B) "Chairman, William Nelson Foundation 1989 through today's Date," (C) "Law Center Foundation" (D) "Practicing Law Institute" (G) "Institute of Judicial Administration" (H) "Federal Bar Council (President, 1979-1980)", (I) "Fellow, American College of Trial Lawyers" etc..

7. Tom's non-access to these lists, that would be available to any attorney, causes us to effectively be denied our right to file a F.R.A.P. Rule 20 "Disqualification of Judges Motion" pursuant to 28 USC § 455 with respect to any panel

member who will be assigned to decide our appeal!

8. Tom alerts this Court to the fact that three PBW&T Partner/Attorneys served as law clerks for three Second Circuit Judges. Tom does not know possible family relationships. As an example, is there any family relationship between Second Circuit Judge Ralph K. Winter and respondent John D. Winter Esq.? Tom reminds this Court that there are 451 attorney respondents in this appeal. Each, of these 451, open possible "Conflicts of Interest" for Second Circuit Judge panel members.

9. We request you to seriously ask yourself "could I ethically act as a disinterested Judge" of each of these 451 respondents named and served both officially and also personally as stated on said "Complaint" page 1 as to both liability and also damages?

10. We have been burned by Judge Griesa's refusal to answer as Judge Newman answered. Our experience in the USDC, SDNY causes Tom to seriously doubt that any judge in the Second Circuit is sufficiently disinterested to render a decision based only upon facts and law. If you determine that Tom's doubt is correct, Tom requests Chief Judge Newman to invoke 28 USC 291 (a) and (b).

Sworn to before me this 27th Day
of January 1995 "S/Thomas W. Moore"

"S/Ruth O'Brien"
Notary Public, State of New York
No. 4724266
Qualified in Rockland County
Commission Expires July 31, 1996

Sworn to before me this 27th Day
of January 1995 "S/Mary L. Moore"

"S/Ruth O'Brien"
Notary Public, State of New York
No. 4724266
Qualified in Rockland County
Commission Expires July 31, 1996

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------x

MOORE

v.

NAYS COURT SYSTEM, **PATTERSON**, BELKNAP, WEBB & **TYLER**, Et. Al.

94-9328

APPELLANTS' MEMORANDUM OF LAW IN SUPPORT OF OUR MOTION TO OBTAIN A **DISINTERESTED PANEL** TO HEAR OUR APPEAL

----------x

ARGUMENT
POINT I

WILL FEDERAL JUDGES **TRULY** ACT TO AID EVERY STATE JUDGE?

94-9328 and its lower court case (0208) are intended to **help** every States' Judges, Justices, Magistrates etc.! Appellants Tom and Mary, at no time, have considered, drafted or pleaded (0208) for the purpose of causing injury to either the six officially and individually named defendant-respondent NAYS Justices or to defendant-respondent NAYS Court System. Our 7/4/76 Declaration of Independence states: "**(King George III) has made Judges dependent on his Will along -**". 94-9328 and (0208) are the result of : "**NAYS Governor Mario M. Cuomo Esq. made both these six NAYS Justices and if necessary the NAYS Court System dependent on his will alone-**". Tom acknowledges our 7/4/76 Declaration is not law. However, US Constitution (1) Article I § 10 "No State shall - grant any title of Nobility" and (2) Article IV § 4 "The United States shall guarantee to every State in this Union a Republican Form of Government," are two Constitutional Provisions violated by Mario M. Cuomo Esq. from 6/24/90 through 12/31/94. This is the reason (0208) and 94-9328 must be **won**!

State Judges, Justices etc. are dependent on each Governor's Will. Every State Court is a "Governor's Court". Not only does this fact violate both aforestated two Constitutional Provisions but also this fact causes every State Judge, Justice etc. to violate the ABA "Code of Judicial Conduct - Canon 1 'A Judge Should Uphold

the Integrity and Independence of the Judiciary". Tom repeats POINT I's Headline "Will Federal Judges truly act to aid every State Judge?" Clearly there are "Problems" with Federal Judges allowing two Pro Se Plaintiffs to sue 344 NYS Judges and Justices in Federal Court. But there has not been a single attorney who brought this absolutely necessary suit **during the past 206 years!** If not now - when? If not us - who?

If we truly intend to "Aid" every state judge, justice etc., why did we sue these 344 NYS Judges and Justices? The New York Attorney General (Hereafter "NYAG") and the USDC, SDNY have ensured that we are now able to fully sue New York State Taxpayers. This was Cuomo's plan when he ordered the 3/18/94 Motion by the NYAG in (0208). Clearly it would be "easier" to obtain damages from NYS Taxpayers than from these NYS Judges and Justices individually. Tom knew this long before (0208) was drafted. However, payments from NYS Taxpayers will **not cause the ABA** - National and NYS lobbyists to open their legislation war chests to do what needs to be done about "Governor's State Courts". Tom believes that if this case hits 344 NYS Judges and Justices **hard enough** that the ABA war chests will be forced to be opened to ensure that Cuomo's acts are not duplicated, repeatedly, in the future.

POINT II
CAN ANY JUDGE BOTH ETHICALLY AND ALSO SUBCONSCIOUSLY DECIDE OUR APPEAL BASED SOLELY UPON FACTS AND LAW?

Two legal issues are argued by defendants. First is "Judicial Immunity". Second is The USSC's interpretation that the Eleventh Amendment provides a State with absolute "Waiver Immunity" against any suit brought by a citizen of said State against itself and also against any of its State "Agents". Tom in the USDC, SDNY provided 210 Factual Valid Causes of Action (Hereafter "FVCA") against defendants NYS Court System, six NYS Justices, officially and individually as attorneys and Mario M. Cuomo officially as Governor of NYS and individually as an attorney. Tom provided 50 FVCAs against defendant **Patterson**, Belknap, Webb &

Tyler (Hereafter "**PBW&T**") and individually named defendant John D. Winter Esq..

Tom cited four USSC Cases, their citation and holdings that are USSC Exceptions to both a State's and also its "Agents" "Waiver Immunity" that clearly apply to all 345 NYS "Agents" in 94-9328. Tom's 210 FVCAs and Four Exceptions eliminated Defendants "Agents" with either "Judicial Immunity" or "Waiver Immunity". Tom's 50 FVCAs eliminate **PBW&Ts**' and Winter's "evasion of liability". The USDC, SDNY was totally unconcerned with either Facts or Law that are - almost 100% - in Tom's and Mary's favor. All 451 defendant-respondents possess **subconscious ties** with the USDJs, SDNY that create impenetrable barriers that hold all 451 respondents "immune" to liability or damages brought in any suit. "Conflicts of Interest" asserted in our affidavit are only part of these **ties**. Other **subconscious ties** are more crucial to the USDC's disregard of both Facts and also Law than our affidavit's stated "Conflicts of Interest".

The past 50 years have seen an evolution in Medical Malpractice Cases. The primary reason is that physicians were finally convinced that it was in their best interest to "**testify**" that certain other physicians were "**negligent**" in specific instances. Similarly, Attorney Malpractice Cases have evolved even in spite of the double standard required to show liability. Both of these evolutions would not have occurred were it not **profitable** for attorneys to represent a layperson in said malpractice trial. The second reason is that both Physicians had to overcome **subconscious ties** to another physician and also Attorneys had to overcome **subconscious ties** to another attorney.

The **subconscious ties** that predominate in (0208) and 94-9328 are the facts that: (1) Judges do not **perceive value** in a jury trial that two pro se laypersons bring against 451 NYS Judges, Justices and Attorneys. (2) Judges openly admit that they desire an attorney to bring Tom's and Mary's suit/appeal. Yet, any attorney who did so would be committing legal career suicide. This **subconscious tie** is just as likely to be the cause

of Chief Judge Griesa's "errors" as the "Conflicts of Interest" asserted in our attached affidavit in support hereof.

Other **subconscious ties** that exist are: (1) We accuse defendants of intentional torts. (2) We not only seek damages to "make Tom and Mary whole" but also we seek **treble damages** under 28 USC § 1367 for liability under NYS's Judiciary Law Article 15 § 487. (3) We seek exemplary damages for both Mary and also for a charitable trust. (4) We seek personal injury "pain and suffering" damages to Mary.

One Governor's attempted personal gain is the sold cause of (0208) and 94-9328. Tom and Mary are innocent bystanders to Cuomo's Greed! This "abuse of public office power" should not be repeated by other greedy state governors. But the only method of preventing repetition is for Tom and Mary **to win** this appeal. Both the Second Circuit **panel** that decides our case and also the **Judge** who acts as overseer of the subsequent jury trial, in order to prevent future "abuse of public office power" must be able to overcome these **subconscious ties!**

CONCLUSION

This Court should perform every act necessary to ensure that, somehow, 94-9328 is decided by a truly **disinterested panel** of Judges who base their decision only upon facts and law. If we prevail, Chief Judge Newman should invoke 28 USC 291 (a) or (b), as required, in order to obtain both a venue and also a **trial judge** who is also as **disinterested** as the panel.

Respectfully Submitted:

Dated January 27, 1995

By "S/Thomas W. Moore
(6104)
Appellant Pro Se
139 Sleepy Hollow Lane
Congers, NY 10920-1515
(914) 268-6704

By "S/Mary L. Moore"
Appellant Pro Se
Address/Telephone same

APPENDIX H

ONE DAY EXPRESS MAIL

139 Sleepy Hollow Lane
Congers, NY 10920-1515
December 29, 1993

Honorable Jon O. Newman
Chief Judge of the Second Circuit, Court of Appeals
Room 1702
United States Court
New York, NY 10007

Re: Governor Cuomo's Usurpation of Judicial Power detailed in attached 32 page Complaint with Twenty-One Federal Questions per 28 USC § 1331

Dear Judge Newman:

A letter exactly like this is mailed to Chief Judge Griesa. The 113 Attorney Defendants named in attached Complaint "Speak for themselves".

It is unlikely that, due to their personal relationship with either one of said Defendants or with Cuomo's Brooklyn Law partners or with some other Attorney or public figure, that **ANY JUDGE** in any NYS District Court or the Second Circuit will consider themselves to be **DISINTERESTED** to the degree to ensure the decisions, rulings and Orders that will be necessary to return to Right of Citizenship to both Plaintiffs.

Time began to run on (1) 4/29/93 (2) 7/23/93 or 11/21/93. We attempted to use every legal means to avoid being forced to bring this Civil Action Pro Se. No Attorney will commit legal career suicide by representing us in this serious case against these powerful and influential 114 Defendants including the NYS Court System.

We will need Qualified Legal expertise with which to consult. However, this is just one of the decisions this Disinterested Judge needs to make. Defendants cannot be allowed to learn who said Counselor is.

Due to the multiple questions and tough decisions contained in the attached complaint, we do not know where to file our Summons and Complaint. We humbly mention 28 USC § 291 et seq. as a possible alternative of yours. We also ask you to rule that your receipt of this Complaint tolls the statute of limitations on both "Tom's case" and also "Mary's case".

Respectfully,

"S/Thomas W. Moore"
Plaintiff Pro Se

ONE DAY EXPRESS MAIL

139 Sleepy Hollow Lane
Congers, NY 10920-1515
December 29, 1993

Honorable Thomas P. Griesa
Chief Judge of the United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: Governor Cuomo's Usurpation of Judicial Power detailed in attached 32 page Complaint with Twenty-One Federal Questions per 28 USC § 1331

Dear Judge Griesa:

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Time began to run on (1) 4/29/93 (2) 7/23/93 or 11/21/93. We attempted to use every legal means to avoid being forced to bring this Civil Action Pro Se. No Attorney will commit legal career suicide by representing us in this serious case against these powerful and influential 114 Defendants including the NYS Court System.

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Due to the multiple questions and tough decisions contained in the attached complaint, we do not know where to file our Summons and Complaint. We humbly mention 28 USC § 291 et seq. as a possible alternative of yours. We also ask you to rule that your receipt of this Complaint tolls the statute of limitations on both "Tom's case" and also "Mary's case".

Respectfully,

"S/Thomas W. Moore"
Plaintiff Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THOMAS W. MOORE, MARY L. MOORE, Plaintiffs. vs. NEW YORK STATE (Hereafter NYS) COURT SYSTEM, MARIO M. CUOMO as Governor NYS, ANN TOM MIKOLL as Justice of NYS Supreme Court Appellate-Division Third Department (Hereafter JSC Ad-3d), PAUL J. YESAWIDCH Jr. JSC AD-3d D. BRUCE CREW III JSC AD-3d THOMAS E. MERCURE JSC AD-3d NORMAN L. HARVEY JSC AD-3d JOAN B. LEFKOWITZ JSC, PATTERSON, BELKNAP, WEBB & TYLER as a Partnership of Attorneys with Professional Corporations, MARIO M. CUOMO as an Individual Attorney (Hereafter Esq.), ANN T. MIKOLL Esq. PAUL J. YESAWICH Jr. Esq., D. BRUCE CREW III Esq., THOMAS E. MERCURE Esq., NORMAN L. HARVEY Esq., JOAN B. LEFKOWITZ Esq., JOHN D. WINTER Esq., Defendants.	CIVIL ACTION NO. COMPLAINT AND DEMAND FOR JURY TRIAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
United States Courthouse
40 Foley Square - Room 1702
New York, NY 10007

GEORGE LANGE III
CLERK

January 5, 1994

Mr. Thomas W. Moore
139 Sleepy Hollow Lane
Congers, NY 10920-1515

Dear Mr. Moore:

Your letter dated December 29, 1993, addressed to Chief Judge Newman has been referred to this office for response.

As you have no case pending before this Court, we are unable to render any assistance to you.

Very truly yours,

"S/Carolyn Clark Campbell"
Chief Deputy Clerk

CCC:en
cc: Hon. Jon O. Newman, Chief Judge

No. 95-1165

Supreme Court, U.S.
FILED
FEB 21 1996
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

THOMAS W. MOORE, MARY L. MOORE,

Petitioners,

—vs.—

NEW YORK STATE (Hereafter NYS) COURT SYSTEM, MARIO M. CUOMO as Governor of NYS, ANN T. MIKOLL as Justice of NYS Supreme Court Appellate Division—Third Department (Hereafter JSC AD-3d), PAUL J. YESAWICH JR. JSC AD-3d, D. BRUCE CREW III JSC AC-3d, THOMAS E. MERCURE JSC AD-3d, NORMAN L. HARVEY JSC AD-3d, JOAN B. LEFKOWITZ, JSC, PATTERSON, BELKNAP, WEBB & TYLER as a Partnership of Attorneys, MARIO M. CUOMO as an Individual Attorney (Hereafter Esq.), ANN T. MIKOLL Esq., PAUL J. YESAWICH JR., Esq., D. BRUCE CREW III Esq., THOMAS E. MERCURE Esq., NORMAN L. HARVEY Esq., JOAN B. LEFKOWITZ Esq., JOHN D. WINTER Esq.,

Respondents.

(*Caption continued on inside front cover*)

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

DAVID F. DOBBINS
PATTERSON, BELKNAP, WEBB & TYLER LLP
1133 Avenue of the Americas
New York, New York 10036
(212) 336-2000

Attorneys for Respondents Patterson, Belknap, Webb & Tyler, John D. Winter, Rockland County, C. Scott Vanderhoef, James Hennessy, Gerald Donnellan, Patricia Prendergast, Bernard Fallen and John Grant

THOMAS W. MOORE, MARY L. MOORE,

Petitioners,

—v.—

THE COUNTY OF ROCKLAND of New York State, C. SCOTT VANDERHOEF, as County Executive, JAMES HENNESSY, as Deputy County Executive, GERALD DONNELLAN, Individually, BERNARD FALLON, Individually, PATRICIA PRENDERGAST, Individually, JOHN GRANT, Individually, DOES ONE through FIVE HUNDRED,

Respondents.

QUESTIONS PRESENTED

Respondents reformulate the questions presented as follows:

1. Whether Petitioners were provided the opportunity to participate in oral argument before the Court of Appeals?

2. Whether the Court of Appeals and the District Court erred in failing to find evidence of a conspiracy among the law firm, one of its partners and the federal and New York State judiciary?

3. Whether the Court of Appeals' summary order impermissibly lacked justifying reasons?

PARTIES

The names of all the parties appear in the caption of the case. No corporate disclosure is required because respondent Rockland County is a governmental entity and respondents C. Scott Vanderhoef, James Hennessy, Gerald Donnellan, Patricia Prendergast, Bernard Fallon and John Grant are individuals who were sued in their individual and official capacities. Respondent Patterson, Belknap, Webb & Tyler LLP is a limited liability partnership organized under New York law; it has no parent corporation or subsidiaries. Respondent John Winter is an individual.

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OPINIONS BELOW, JURISDICTION, CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Decision and Order of the New York State Supreme Court dismissing Petitioner's Mary Moore's claims stemming from her termination of employment is unpublished and appears in the Petition for a Writ of Certiorari at Appendix F ("Pet. App." F, 36a-38a).

The Memorandum and Order of the Appellate Division, Third Department, affirming the state Supreme Court's decision is published at Moore v. County of Rockland, 192 A.D.2d 1021, 596 N.Y.S.2d (3d Dept. 1993); see also Pet. App. E, 30a-35a.

On September 30, 1994, after New York's appellate court had affirmed the dismissal of Ms. Moore's claims, the Honorable Thomas P. Griesa, the Chief Judge of the United States District Court for the Southern District of New York, issued an Opinion granting respondents' motions to dismiss two actions brought by Petitioners Mary and Thomas Moore (the "Moores"). The District Court's opinion is unpublished and appears at Pet. App. C, 24a-28a.

After a judgment was entered against them, the Moores moved to alter or amend the District Court's Order.

This motion was denied in all respects by Judge Griesa on November 18, 1994. The Moores appealed the denial of their motion to amend the judgment as well as the District Court's Order dismissing the two actions.

The United States Court of Appeals for the Second Circuit issued an Order and brief opinion on October 18, 1994 affirming the judgments of the District Court. The opinion is unpublished and appears at Pet. App. A, 16a-18a. Thereafter, the Moores moved for relief pursuant to 2d. Cir. R. 34(c), 2d. Cir. R. 34(d). This motion was denied on November 27, 1994.

28 U.S.C. § 1254:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

United States Court of Appeals for the Second Circuit, Local Rule 34:

(c) **Postponement of Argument**. Except in the event of an emergency, such as unforeseen illness of counsel, an application to postpone the date for oral argument

will ordinarily not be favorably entertained. Engagement of counsel in courts (other than the Supreme Court of the United States) or administrative hearings will not be considered good cause for postponement. The date for oral argument may not be postponed by stipulation.

(d) **Determination by Court Not to Hear Oral Argument**.

1. If the court, acting sua sponte, contemplates deciding an appeal without hearing oral argument, each of the parties will be given an opportunity to file a statement setting forth reasons for hearing oral argument. Oral argument will be allowed in all cases except those in which a panel of three judges, after examination of the briefs and record, shall be of the unanimous view that oral argument is not needed for one of the following reasons:

(i) the appeal is frivolous; or

(ii) the dispositive issue or set of issues has been recently authoritatively decided; or

(iii) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

2. To prevent undue delay, incarcerated pro se appellants requesting oral argument shall file the above-mentioned statement of reasons at the time they file their briefs."

STATEMENT OF THE CASE

Course of Proceedings and Disposition of the Case Below

On June 20, 1991, Ms. Moore brought suit in New York State Supreme Court seeking redress for her termination of employment as the Director of Rockland County's Veterans Service Agency. Defendants in the action included Rockland County and several current or former county officials, including Messrs. Grant, Fallon, Donnellan and Ms. Prendergast. The complaint alleged seven causes of action including claims for: (1) conspiracy; (2) fraud; (3) civil service and due process violations; (4) intentional infliction of emotional distress; (5) whistle blower; (6) violation of the Administrative Code of Rockland County, section 5-32(e); and (7) violation of plaintiff's federal constitutional rights under 42 U.S.C. § 1983.

In an Order dated December 3, 1991, respondent Justice Joan Lefkowitz granted defendants' motion for summary judgment holding Ms. Moore was an "at-will"

employee and her status as an "at-will" employee was fatal to several of her claims. Justice Lefkowitz further determined many of Ms. Moore's claims were legally deficient and, therefore, subject to dismissal. Finally, Justice Lefkowitz concluded that portions of the complaint had to be dismissed because of procedural defects in Ms. Moore's state law causes of action. (Opinion of Justice Lefkowitz, Pet. App. F, 36a-38a).

Ms. Moore appealed this ruling. On April 29, 1993, the Appellate Division, Third Department, affirmed Justice Lefkowitz' decision dismissing Ms. Moore's seven causes of action.[1] (Third Department Memorandum and Order, Pet. App. E, 30a). Later, Ms. Moore sought leave to appeal the Third Department's decision to New York is Court of Appeals or to the United States District Court. The motion was denied on July 23, 1993. (Third Department Order, Pet. App. D, 29a).

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1 All of the judges who ruled on Ms. Moore's appeal are respondents here and are represented by New York State's Attorney General.

More than two years later, Ms. Moore, joined by her husband, Mr. Moore, filed two actions pro se in the Southern District of New York.

First Action: Moore v. New York State Court System, et al. (94 Civ. 0208). The first action, filed in January, 1994, named as defendants, inter alia, the New York State Court System; former Governor Mario Cuomo, in his official and individual capacities; the trial justice and the appellate justices who decided Ms. Moore's state court action' in their official and individual capacities; the law firm Patterson, Belknap, Webb & Tyler LLP, and a partner in that firm, Mr. Winter, who represented defendants in the state court action. The Moores alleged that in violation of 42 U.S.C. § 1983 defendants conspired to violate their constitutional rights by abusing the legal process to obtain the dismissal of Ms. Moore's state court action. An additional allegation was that defendants subjected the Moores to cruel and unusual punishment in violation of the Eighth Amendment by obtaining the dismissal of the lawsuit.

Second Action: Moore v. County of Rockland, et al. (94 Civ. 2678). In their second action, filed on April 14,

1994, the Moores sued the County of Rockland, Messrs. Vanderhoef, Hennessy, Donnellan, Fallon, Grant and Ms. Prendergast. With some minor variations, the allegations against these respondents were the same as those made in the previously dismissed state court action.

On September 30, 1994, Chief Judge Griesa issued an Opinion dismissing both actions brought by the Moores. (Opinion, Pet. App. C, 24a-28a). With respect to the first action, Moore v. New York State Court System, et al. (94 Civ. 0208), Judge Griesa determined that the court lacked subject matter jurisdiction over many of the claims asserted because of the broad principle of sovereign immunity, which applied to the State Court System, the Governor, and the justices who decided the state court action. Moreover, Judge Griesa concluded that the Moores failed to assert a factually sufficient statement of a valid cause of action against the Patterson, Belknap firm and the partner in the firm who defended the state court action. (Opinion, Pet. App. C, 26a-27a).

With respect to the second action, Moore v. County of Rockland, et al. (94 Civ. 2678), Judge Grisea concluded

that the doctrine of res judicata applied because the complaint did nothing more than repeat the previously dismissed state court allegations. (Opinion, Pet. App. C, 27a-28a).

On November 14, 1995, the Moores filed a motion to alter or amend the judgment of the District Court, which was denied in all respects on November 18, 1994. (Order, Pet. App. B, 21a).

On December 5, 1994, the Moores filed notices of appeal with respect to Judge Griesa's initial ruling as well as his denial of the Moores' motion to amend the judgement. (Notice of Appeal, Pet. App. B, 19a-20a).

Approximately nine months later, in September 1995, a clerk of the Court of Appeals notified Ms. Moore that a firm date for Oral Argument had been scheduled for October 12, 1995. (Petition for Writ of Certiorari, at 5). By letter dated September 26, 1995, Ms. Moore requested an adjournment of oral argument because of the illness of Mr. Moore, the co-appellant pro se. (Moore letter, Pet. App. A, 7a). In further support of Ms. Moore's request, Mr.Moore's physician submitted a letter stating that Mr. Moore recently underwent surgery. (Dr. Ng letter, Pet. App. A, 6a). In response, the

Clerk of the Court, by letter dated October 6, 1995, notified Ms. Moore the Court was unable to grant an adjournment of Oral Argument. The Clerk added, however, that the Court would allow Ms. Moore to argue on Mr. Moore's behalf as well as for herself as appellants pro se. (Clerk Letter, Pet. App. A, 8a).

The Moores declined to accept this invitation from the Court. Thereafter, respondents waived argument and the appeals from the judgments of the District Court were taken on submission by the Second Circuit. (Second Circuit Order, Pet. App. A, 16a).

In an Order and brief opinion filed and entered October 18, 1995, the Court of Appeals ruled the first federal court suit (Moore v. New York State Court System, et al.) was properly dismissed against the private defendants--the law firm and the lawyer representing the defendants in the state court action--because the complaint failed to allege any governmental action by these parties. Moreover, the Court of Appeals held that the suit was properly dismissed against the remaining defendants, who were protected either by judicial immunity or Eleventh Amendment immunity. The Court also

ruled the second suit (Moore v. County of Rockland, et al.) was properly dismissed because on the face of the complaint, the suit was barred by res judicata. Finally, the Court of Appeals enjoined the Moores from filing in another federal court challenging the termination of Ms. Moore's employment without obtaining leave to file such a suit from the court in which the lawsuit is being filed. (Order, Pet. App. A, 17a-18a).

Following receipt of this ruling, the Moores moved for relief pursuant to 2d. Cir. R. 34(c),(d). The motion reiterated the arguments asserted by Ms. Moore in her September 26 letter requesting a postponement of the oral argument due to Mr. Moore's illness. (Notice of Motion, Affidavit of Thomas Moore, Pet. App. A, 1a, 2a-5a). The motion was denied on November 27, 1995. (Motion Order, Pet. App. A, 1a).

◆

REASONS FOR DENYING THE WRIT

It is difficult to pinpoint the Moores' legal arguments supporting review of their petition for a Writ of Certiorari. There is no assertion by Petitioners that the decision of the

Court of Appeals involves an area of conflict among the circuit courts. Similarly, there is no assertion that the Court of Appeals misapplied Supreme Court precedent on an important federal question, or that the Court of Appeals decided an important question of federal law that has not been, but should be, settled by the Supreme Court. Finally, there is no assertion that the Court of Appeals acted in any way as to require the exercise of the Supreme Court's supervisory power.

Liberally construed, the Moores' petition alleges three reasons for Supreme Court review: (1) Petitioners were improperly denied the opportunity to participate in Oral Argument before the Court of Appeals; (2) The Court of Appeals and the District Court erred in failing to find evidence of a conspiracy among the law firm, Mr. Winter and the state and federal judiciary; and (3) the Court of Appeal's Order of November 27, 1995 summarily denying Petitioners' motion for a hearing impermissibly lacked justifying reasons.

First: The denial of Ms. Moore's request for an adjournment of oral argument was not a "judgment" or "decree" of the Court of Appeals within the meaning of 28

U.S.C. § 1254(1). Ms. Moore requested postponement in the form of a letter, not a motion. (Pet. App. A, 7a). The notice of denial of Ms. Moore's request came in the form of a Clerk's letter. (Pet. App. A, 8a). Thus, the denial of the request for an adjournment is not a matter susceptible to review by the Supreme Court. In any case, it is settled that a party has no constitutional entitlement to make an oral argument before a judicial tribunal. See FCC v. WJR, Goodwill Station, Inc., 337 U.S. 265, 274-77 (1949). The Courts of Appeal are entitled to make rules limiting oral argument. Fed. R. App. P. 34(a); 2d Cir. R. 34(d). Moreover, the Court of Appeals' action cannot be deemed a departure from accepted judicial proceedings because: (a) the Clerk invited Ms. Moore, the co-appellant, to address the Court at oral argument; and (b) 2d Cir. R. 34(c) explicitly notes that an application to postpone the date of oral argument "will ordinarily not be favorably entertained." Finally, the decision to grant or deny oral argument in accordance with the Local Rules of a Court of Appeals is a fact-specific inquiry that does not raise important legal questions for this Court's review.

Second: The Court of Appeals concluded it was not error to dismiss the case against the private defendants--the law firm and the lawyer representing the defendants in the state court action -- because the complaint failed to allege the private defendants acted in any way under color of state law. (Pet. App. A, 17a). This ruling was correct because governmental action is a requirement for a section 1983 cause of action. Monroe v. Pape, 365 U.S. 167 (1961). Thus the Court applied a properly stated rule of law, and no grounds for Certiorari exist. Even assuming the complaint did allege governmental action, the scope of the private defendants' acts is a fact-specific inquiry, and Certiorari is rarely granted when the asserted error consists of erroneous factual findings. United States v. Johnston, 268 U.S. 220, 227 (1925); see Texas v. Mead, 465 U.S. 1041 (1984) (Stevens, J.).

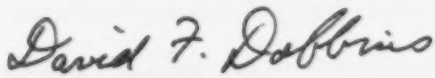
Third: A summary order is permissible. See 2d Cir. R. § 0.23. Such a common action does not raise important legal issues and does not call for an exercise of the Supreme Court's power of supervision or review.

CONCLUSION

For all the foregoing reasons, the petition for a writ of certiorari in this case should be denied.

Dated: New York, New York
February 21, 1996

Respectfully submitted,



David F. Dobbins
Counsel of Record
Patterson, Belknap, Webb &
Tyler LLP
Attorneys for Respondents
1133 Avenue of the Americas
New York, N.Y. 10036
(212) 336-2000

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No. 95-1165

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

THOMAS W. MOORE, MARY L. MOORE - PETITIONERS

VS.

PATTERSON, BELKNAP, WEBB & TYLER, ET. Al. - RESPONDENTS

PETITIONERS' REPLY BRIEF TO RESPONDENTS' BRIEF IN OPPOSITION

THOMAS W. MOORE & MARY L. MOORE
139 SLEEPY HOLLOW LANE
CONGERS, NEW YORK 10920-1515
(914) 268-6704

14pp

REASONS OPPOSITION BRIEF SUPPORTS THE GRANTING OF WRIT

1. PBW&T'S FILING A BRIEF IN OPPOSITION RAISES A "**RED FLAG**"!

2. PBW&T'S ARGUMENT AGAINST TOM **QUESTION** (I) FAVORS WRIT GRANT!

3. PBW&T MONROE CITATION FAVORS GRANT OF TOM WRIT.

4. PBW&T OTHER TWO CITATIONS' ARGUMENT ARE DISTINGUISHED FROM MOORE V. PBW&T ET. AL. AS BEING IRRELEVANT.

5. PBW&T'S ERRORS FAVOR GRANT OF TOM WRIT.

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REASONS OPPOSITION BRIEF SUPPORTS THE GRANTING OF WRIT

1. PBW&T'S FILING A BRIEF IN OPPOSITION RAISES A "RED FLAG"!

PBW&T knows the tiny percentage of "Petitions" that are GRANTED primarily without "Opposition". The NYAG declined to file opposition. Yet the NYAG represents more respondents than PBW&T. PBW&T represents itself and Mr. Winter. PBW&T in this Petition does not represent **seven of the nine alleged respondents** that PBW&T, under Fed. R. Civ. P. 11 falsely, claims to represent on its Brief Cover page front and back! WHY? TOM has not named these seven alleged PBW&T respondents in our Petition. TOM does not deny that TOM NYS attorneys failed to file a civil rights complaint in federal court within 3 years of Mary's job termination. 2d Cir. raised this (new) grounds for eliminating Rockland et. al. as Respondents. This is why TOM did not Petition against these seven Respondents. PBW&T, by silence, **admits the truth** of approximately **90%** of TOM Petition including: TOM "**QUESTIONS PRESENTED**" (II), (III) and (IV). TOM will separately address the 10% of TOM Petition that PBW&T does argue. Clearly the "**Red Flag**" that PBW&T raises is not worth arguing 10% of TOM Petition while by silence - **admitting** - 90% of TOM Petition. Why did PBW&T submit this Opposition Brief? The reason is PBW&T believes that by submitting (on its false and totally improper USSC Cover front and back) the names of these 121 VIPs that these VIPs will prejudice the USSC examiners of TOM Petition into denial of a Writ. This is the **same tactic** that PBW&T used successfully in four prior courts and two court systems for 5½ years. If PBW&T's tactic works the Motto of the USSC "**equal justice under law**" will be abandoned!

However, there is a second reason why PBW&T desperately needs to stop TOM Petition before a Writ Hearing. TOM Appendices constitute about 1% of the record at four courts. TOM record is absolutely the last: law, legal arguments and facts that PBW&T **wants to be examined by impartial federal Judge and jury.**

2. PBW&T'S ARGUMENT AGAINST TOM QUESTION (I) FAVORS WRIT GRANT!

PBW&T's Brief almost **entirely** argues TOM QUESTION (I) on: pg. i (all 3 QUESTIONS), pgs. 2 & 3 2d Cir. Local Rules 34 (c) & (d), pg. 8 (last par.), pg. 9 (pars. 1 & 2), pg. 11 alleged reasons (1) & (3), pg. 12 (entire pg.), pg. 13 (par. Third). PBW&T's eight pages out of 13¼ pages are totally devoted to one issue, that TOM would be grossly negligent if TOM did not ask the examiners of 95-1165 - after reading Respondents Brief - to refresh their memory of TOM Petition pgs.: (i), (2), (3), (5), (6), (7), 1st par. on (8) and **Appendix A** pgs. 1a through 15a.

Yet there exist law and facts, not mentioned in TOM Petition, that aid the examiners' knowledge on this crucial issue. PBW&T on 11/14/90 discovered:

> Page 7 of 50H Deposition of Mary L. Moore by PBW&T lines 18 through 23: (PBW&T) 'Have you ever been deposed before?' (Mary) 'No.' (PBW&T) 'Have you ever been a party to a lawsuit?' (Mary) 'No.' Mary from 8/90 through 4/29/93 was represented by NYS experienced trial and appellate attorneys who assisted Mary at this 50H Deposition.

From 4/30/93 through the future of this Case Tom has/will fully represent(ed) Mary and Tom. Mary's total assistance has been to sign various documents where Tom asked Mary to sign. Therefore, Mary's legal knowledge is only slightly advanced from her legal knowledge on 11/14/90. Mary never prepared a Motion at any court, much less under the special requirements of 2d. Cir. Mary **totally relied** upon the written statement by 2d Cir. that Tom was entitled to represent his spouse at the 2d. Cir. Mary could not have received notice of oral argument scheduled on 10/12/95 until 9/18/95 at 5:00 p.m. Tom was admitted into Saint Vincents Hospital on 9/16/95 for two weeks of massive antibiotics and chemotherapy intravenous therapy and twenty radiation treatments. Mary notified Tom some time on Tuesday 9/19/95.

Tom stated: 'No hearing should have been scheduled since I made a good faith effort to notify 2d. Cir. on **8/3/85 of my emergency condition.**' Mary said 'What must I do?' Tom said 'submit a Motion for a postponement.' Mary said 'it is impossible for me to prepare a Motion.' Tom said 'do your best.' Tom asked Saint Vincents' clerical staff who said: 'Your **8/3/95 Notice** that you prepared had never been mailed to 2d. Cir.' Tom asked Dr. Ng: 'to submit another notice.' This resulted in **Appendix A** letters on pages 6a and 7a.

Tom asserts, under these circumstances, two notices to 2d Cir. are more than sufficient to obtain a postponement under 2d. Cir. Local Rule 34. Tom was not released from Hospital until 9/30/95 and was physically unable to travel to NYC until 10/17/95 ie. 5 days after scheduled Oral Argument. Moreover, not until 11/11/95 was Tom able to begin to prepare a Motion to 2d. Cir. (See Appendix A Affidavit pgs. 2a through 7a)

PBW&T Brief pg. 7 argues that: 'the Clerk of the Court, by letter dated October 7, 1995, notified Ms. Moore the Court was unable to grant an adjournment of Oral Argument. The Clerk added, however that the Court would allow Ms. Moore to argue on Mr. Moore's behalf as well as for herself as appellants pro se. (Clerk Letter. Pet. App. A 8a). The Moore's declined to accept this invitation from the Court.'

In light of all facts aforestated in TOM REASON 2 under any equitable examination, PBW&T's Brief arguments against TOM Petition **QUESTION** (I) are **very unpersuasive**. Moreover, TOM equitable facts **are re-enforced by law** (see below).

2d. Cir. not only denied postponement on 10/6/95 but also denied TOM 11/15/95 Motion **Appendix A** 1a through 15a on 11/27/95 by a fourth federal Judge. WHY? No reason is given in the 10/6/95 letter or on the 11/27/95 Denial that completely overturns 2d. Cir. Local Rules 34 (c) and (d).

U.S. Constitution opposes PBW&T's (pg. 12 last four lines) argument: "Finally, the decision to grant or deny oral argument in accordance with the Local Rules of a Court of Appeals is a fact-specific inquiry that does not raise important legal questions for this Court's review.'

TOM aforementioned facts constitute clear Civil Rights Violations "Under Color of State Law" under 42 USC § 1983 by four federal Judges by conspiracy with PBW&T to violate the 5th and 14th Amendments. Local Rules 34 (c) and (d) in 2d. Cir. apply to residents of each of the states covered by 2d. Cir. Rule 34(c) "-in the event of an emergency, such as unforeseen illness of counsel" **(postponement will be granted)**. 2d. Cir. Local Rule 34(d) "-each of the parties will be given an opportunity **to file a statement setting forth reasons** for hearing oral argument. Oral argument will be allowed in all cases except those in which a panel of three judges, after examination of the briefs and record (except for three reasons stated in PBW&T pg. 3). TOM **statement guaranteed** under Local Rule 34(d) should now be re-examined by the USSC examiner (see **Appendix A pages 9a through 15a**).

TOM Statement is not: (1) "frivolous", (2) 2d. Cir. did not "authoritatively decide" (a) PBW&T's liability in line with USSC Decision in Dennis, supra. or (b) Cuomo's (80%) or alternatively (c) NYS Judiciary custom to violate the U.S. Constitution and (d) all six other defaulting attorneys (20%) Qualified immunity liability in Burns, Forrester, Malley, Mitchell or Harlow, supra. (see Table of Authorities cited page ii herein), (3) although law covering all these matters (Appendix A Statement Pgs. 9a through 15a) **IS** contained in TOM 2d Cir. Appellants Brief and Reply Brief, 2d. Cir. refused to even read TOM Briefs. Therefore "**the decisional process would be significantly aided by** (2d. Cir.) **reading pages 9a through 15a**".

TOM asserts that TOM has been discriminated against four times by 2d. Cir. denying both 34(c) and (d) to TOM on two different dates. The U.S.

Constitutional Provisions violated are "Due Process of Law" under the 5th and 14th Amendments and "Equal Protection of the Laws" under the 14th Amendment. TOM further states that PBW&T conspired with four or five federal Judges to effect these Civil Rights violations as participants "under Color of State Laws". The USSC may decide to hold federal Judges immune (but **no judicial act** and no hearing occurred, at least, at the 2d. Cir.). However, PBW&T pursuant to Dennis, supra. as private participants are liable for these four civil rights violations "Under color of state laws" regardless of judicial immunity.

> PBW&T's Brief argues on pages 10 & 11: 'There is no assertion by Petitioners that the decision of the Court of Appeals involves an area of conflict among circuit courts. Similarly, there is no assertion that the Court of Appeals misapplied Supreme Court precedent on an important federal question, or that the Court of Appeals decided an important question of federal law that has not been, but should be, settled by the Supreme Court. Finally there is no assertion that the Court of Appeals acted in any way as to require the exercise of the Supreme Court's supervisory power."

2d. Cir. had from receipt of both Appendix A letters on pages 6a & 7a (on or about 9/27/95) through 11/27/95 full opportunity to provide due process of law and equal protection of the laws. 2d. Cir. denied these to TOM. This denial of 5th and 14th Amendment rights was disguised as denial of Local Rules 34 (c) & (d) as-of-right legal process guaranteed to all parties. TOM hereby asserts that the Court of Appeals by refusing to follow its own law leaves TOM with no recourse other than Petition the USSC to "**exercise its supervisory power**" by granting TOM Writ of Certiorari.

PBW&T page 12 states: "The Courts of Appeals are entitled to make rules limiting oral argument. Fed. R. App. P. 34(a); 2d. Cir. R. 34 (d)" - This means that each circuit can have different rules. TOM asserts that 2d. Cir. 10/18/95 and 11/27/95

decisions of the Court of Appeals involves conflict among the circuit courts favoring USSC grant of TOM Writ of Certiorari.

PBW&T (and NYAG) by silence admit that of TOM **103 citations** shepardized from 1st, 2nd and 3rd Cir. under Dennis, supra. since 1980 - not one of these 103 Cases grants plaintiffs damage award against an attorney conspiring with a state Justice of Judge. TOM asserts that these facts show that the 10/18/95 2d. Cir. release of PBW&T and Winter Esq. because their state agent co-conspirators allegedly had some immunity and PBW&T/Winter in TOM "Complaint failed to allege any governmental action by these two defendants' violates Dennis supra. Moreover, the admitted 40 citations of Dennis supra. by 2d. Cir. since 1980 constitute evidence that **all three TOM Panel Judges intentionally misapplied Supreme Court precedent on an important federal question** favoring a USSC grant of Writ of Certiorari to TOM.

> PBW&T Brief argues on page 13: 'Third: A summary order is permissible. See 2d. Cir. R. § 0.23. Such a common action does not raise important legal issues and does not call for an exercise of the Supreme Court's power of supervision or review.'

In direct opposition TOM addresses not only all prior facts and law relating to TOM Petition **QUESTION** (I) but also the silent **admission** by both PBW&T and also NYAG of TOM Petition facts and law relating to TOM **QUESTIONS** (II), (III) and (IV). 2d. Cir. Local Rule § 0.23 is alleged by PBW&T (and 2d. Cir.) to be the entire authority by both 2d. Cir. and up to all the other federal circuits to bury (unpublish) tens of thousands of cases in these circuits of Civil Rights Conspiracies **violating** USSC Decisions in: (1) Dennis, supra. (2) Foman, supra. and (3) Haines, supra. Tom asserts that 2d Cir. and every other federal circuit that misuses Local Rules such as § 0.23 and 34 (c) and (d) **decided (for all circuits) an important question of federal law that has not been, but should be, settled by the Supreme Court** favoring grant of Writ to TOM Petition.

TOM now addresses another Fed. R. Civ. P. 11 false statement in PBW&T Brief citation on page 12 'Thus, the denial of the request of an adjournment is not a matter susceptible to review by the Supreme Court. In any case, it is settled that a **PARTY has no constitutional entitlement** to make a oral argument before a judicial tribunal. See FCC v. WJR Goodwill Station, Inc., 337 U.S. 265, 274-77 U.S. 265, 274-77 (1949), (TOM Bold, CAP).

It is not **"settled that a PARTY has no constitutional entitlement to make a oral argument before a judicial tribunal"** solely based upon FCC, supra. as asserted by PBW&T. (1) WJR was **not a PARTY** in the case that WJR attempted to Orally argue. (2) The USSC **remanded** this case for on-the-merits consideration of WJR's Petition to become a **PARTY**. (3) "It follows also that **we should not undertake to generalize more broadly than the particular circumstances** require upon when and under what circumstances procedural due process may require oral argument." (top pg. 277). "-the question (is) whether (WJR) has standing to appear as **PARTY** aggrieved." (bottom page 284). TOM added bold, caps, underline. PBW&T has, for the third time, made a false citation per Fed. R. Civ. P. 11 to a federal court.

TOM moved both S.D.N.Y. and 2d. Cir. to assess sanctions for both prior false citations. TOM moves the USSC for an award of sanctions against PBW&T under Fed. R. Civ. P. 11. **PBW&T will continue to lie to federal courts** until one federal court acts!

3. PBW&T MONROE CITATION FAVORS GRANT OF TOM WRIT.

PBW&T Brief page 13 argues Monroe v. Pape, 365 U.S. 167 (1961) (see Par. "Second:) as alleged basis to deny writ. But Monroe, supra. released only the City of Chicago as not being a "Person" under 42 USC § 1983 "acts under color of state law". Police Officers took many Warrantless actions not authorized by City of Chicago that are clear U.S. Constitutional violations. The USSC reversed both lower federal court decisions with

respect to the police officers holding these persons as liable under 42 USC § 1983. The **primary issue is:** "42 USC § 1983 provides a federal remedy though the state remedy, adequate in theory, is not available in practice" (page 167 Civil Rights § 12.5 - remedies - purpose of statute Headnote). **Conspiracy** in Dennis, supra. is **clearly distinguished** from Monroe, supra.

4. PBW&T OTHER TWO CITATIONS' ARGUMENT ARE DISTINGUISHED FROM MOORE V. PBW&T ET. AL. AS BEING IRRELEVANT

TOM record for USSC consists of: 90% Legal citations, experienced appellate USSC Admitted Legal Argument and facts only added to confirm legal issues. TOM 11/15/94 Motion is 96% Legal Argument, court documents and court record of legal pleadings. PBW&T's assertion that USSC will not "review evidence and discuss specific facts" has no relevance to Moore v. PBW&T Writ Brief and Hearing.

> PBW&T argues: 'The scope of the private defendants' acts is a fact-specific inquiry, and Certiorari is rarely granted when the asserted error consists of erroneous factual findings. United States v. Johnson, 268 U.S. 220, 227 (1925) see Texas v. Mead, 465 U.S. 1041 (1984) (Stephens, J.).'
>
> TOM, concurrently argues in opposition to: PBW&T final arguments (pg. i 2. Whether the Court of Appeals and the District Court erred in failing to find evidence of a conspiracy among the law firm, one of its partners and the federal and New York State judiciary? 3. Whether the Court of Appeals summary order impermissible lacked justifying reasons?) These arguments are repeated on PBW&T page 11 2nd par. (2) and (3).

PBW&T admits that TOM filed a Motion to amend on 11/15/94 that SDNY denied on 11/18/94 without stating any reason. TOM had been prevented from filing the record of both NYS courts as was fully explained to SDNY. TOM therefore had to both file a large portion of the Record of the NYS Courts including TOM Petition **Appendices D & E.** TOM's 53

page Amended Complaint primarily addresses Appendices D & E of 8 pages with additional Legal Argument from TOM NYS appellate experienced attorneys of 137 pages. TOM Amended Complaint examines 31 pages of legal argument filed by PBW&T in NYS courts that is also included in TOM 11/15/94 Motion. Because of all aforementioned data, TOM 11/15/94 Motion contains Two Hundred and Ninety Eight pages of **Legal Argument that fully explains TOM 260 Factual Valid Causes of Action as evidence of the blatant conspiracy between PBW&T and all six NYS Justices, and Cuomo or the NYS Judiciary.**

The reason that U.S.D.C., S.D.N.Y. and 2d. Cir. "erred in failing to find evidence of a conspiracy among the law firm, Mr. Winter and the state judiciary" argument by PBW&T is that neither federal court read these 298 pages! 2d. Cir. Three Judge Panel refused to read TOM Appellants Brief or Reply Brief.

> Evidence of 2d Cir's. failure is contained on TOM Reply Brief page 34: - Polur v. Raffe, 912 F. 2d 52 (2d Cir. 1990) cert. denied. 499 U.S. 937 (1991) Page 43 Holds: 'Finding that judicial immunity bars civil rights (42 USC §s 1983 & 1985) claims **does not require dismissal of action against private parties who are accused of conspiring with judge."**

TOM states the above quotation from TOM Reply Brief is evidence that 2d cir. conspired with defendants PBW&T and Winter when said Panel signed TOM Appendix A page 17a par. two.

5. PBW&T'S ERRORS FAVOR GRANT OF TOM WRIT.

PBW&T re-reargues that Mary was an "at-will" employee and hopes the two NYS Orders' citation of Murphy, supra. **Appendices E & F** will harm granting of TOM Writ. Mary was not "at-will". This is legally argued in immense detail in the record at all four courts.

> PBW&T pages 5 and 6 state: 'The (NYS Court) motion was denied on July 23, 1993' - **'More than two years later**, - on January 14, 1994 - on April 14, 1994 (TOM) filed two actions

pro se in SDNY. TOM believes 7/23/93 to 1/14/94 is less than **6 months** and 7/23/93 to 4/14/94 is less than **nine months.**

CONCLUSIONS

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Thomas W. Moore

Thomas W. Moore

Mary L. Moore

Mary L. Moore

February 29, 1996